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September 19, 1950

Witness	*By The Deputy Commr*	*Direct*	*Cross*	*Redirect*	*Recross*
Earl Porter		65	75		
		105	106		
		110	114		

EXHIBITS

No.	Introduced By	Description	PAGE Received
A	Respondent	Form US-201, reporting injury to Employer and the Deputy Commissioner	100 (see 118-119)
B	Respondent	Form US-203, Employee's Claim for Compensation	100 (see 121)

November 10, 1950

Witness	By The Deputy Commr	Direct	Cross	Redirect	Recross
Ernest Wisby	126	127	133		
Leslie Lovely	135	135	138		
Alton Peterman	139	140	141	141	
J. T. Moore	142	142	145		
W. C. Smith	146	146			
James Rice	148	149			
Thurman Medlock	153	153			
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Earnest Caldwell	156	156			
J. D. Washington	162	162			
Rufus Giles, Jr.	164	164			
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Willie Tripp	170	171			
Claude Nelson	172	173			
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B. D. Harris	182	184			
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Ruhl Jerome Tarpey	189	186			
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A. P. David	192	193			
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A	Deputy Comm'r.	Statement of Earnest Caldwell dated October 2, 1950	217
B	Deputy Comm'r.	Letter from Texas Employment Commission, as to earnings of Earl Porter, dated October 5, 1950	217
C	Deputy Comm'r.	Statement of Dr. Emil Carroll dated September 20, 1950	217
D	Deputy Comm'r.	Statement of Dr. Emil Carroll, dated October 31, 1950	217
E	Deputy Comm'r.	Report of John Sealy Hospital, dated October 10, 1950	217
F	Deputy Comm'r.	Statement of John Sealy Hospital dated November 1, 1950	217
G	Deputy Comm'r.	Statement of Dr. R. E. McMeans, Sr., Chiropractic Clinic, dated September 21, 1950	217

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DESIGNATION OF RECORD ON APPEAL

(Filed December 12, 1951)
(Title Omitted)

To: Hal V. Watts, Esq.
Clerk, United States District Court
Southern District of Texas, Houston Division,
Houston, Texas

Defendant, Hugh A. Voris, hereby designates the following portions of the record, proceedings and evidence to be included in the record on appeal to be forwarded to the Clerk of the United States Court of Appeals, Fifth Circuit, New Orleans, Louisiana:

1. Original Complaint filed December 8, 1950.

2. Order granting preliminary injunction, etc. filed December 15, 1950 entered Volume 39, Page 211.

3. Order filed and entered Volume 39, Page 243 granting interlocutory injunction, etc. filed December 19, 1950.

4. Findings of Fact and Conclusions of Law filed December 20, 1950.

5. Motion of Brian S. Odem, United States Attorney, to remand record, etc. filed January 17, 1951.

6. Motion in opposition to government's motion to remand the record to Deputy Commissioner filed January 22, 1951.

7. Memorandum of court remanding case to Deputy Commissioner granting temporary injunction filed March 1, 1951.

8. Motion to remand granted, and temporary injunction restraining defendant from collecting while matters pending

before Commissioner, entered Volume 40, Page 258 entered March 1, 1951.

9. Order to remand (T.M.K.) filed and entered Volume 40, Page 353, etc. filed March 9, 1951.

10. Plaintiff's Supplemental Complaint filed April 3, 1951.

11. Answer of Hugh A. Voris filed June 7, 1951.

12. Official report of proceedings before Hugh A. Voris, Deputy Commissioner of the Eighth Compensation District, filed July 31, 1951.

13. Findings of Fact and Conclusions of Law filed September 1, 1951.

14. (B.C.C.) Final Decree filed and entered Volume 42, Page 567, September 17, 1951.

15. Notice of Appeal of defendant, Hugh A. Voris with certificate of service thereon filed November 5, 1951.

16. This designation.

BRIAN S. ODEM
United States Attorney
By WILLIAM G. WINTERS, JR.
Assistant United States Attorney

I certify a copy of the foregoing was mailed to Royston & Rayzor, Attorneys at Law, Cotton Exchange Building, Houston, Texas, this 12 day of December, 1951.

WILLIAM G. WINTERS, JR.
William G. Winters, Jr.
Assistant United States Attorney

wgw:rbm

3 CAPTION

IN THE
UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF TEXAS,
HOLDING SESSIONS AT HOUSTON

No. 5889 Civil Action

Charles Eikel and B. D. Harris
dba Southern Stevedoring & Contracting Co. and
Texas Employers' Insurance Association
—vs—
Hugh A. Voris and Earl Porter

BE IT REMEMBERED: That in the above entitled and numbered cause, lately pending in said Court, in which Final Judgment was rendered at the Regular February, 1951 Term of said Court, to-wit:

On the 17th day of September A.D. 1951, the Honorable Ben C. Connally, Judge of the United States District Court for the Southern District of Texas, presiding, the following proceedings were had, to-wit:

4 ORIGINAL COMPLAINT

(Filed December 8, 1950)
(Title Omitted)

To The Honorable Judges of Said Court:

Now comes Charles Eikel and B. D. Harris, doing business as Southern Stevedoring & Contracting Company, and Texas Employers' Insurance Association, hereinafter referred to as plaintiffs, complaining of Hugh A. Voris, Deputy Commissioner, and Earl Porter, claimant, hereinafter referred to as defendant-Deputy Commissioner and defendant-claimant, respectively, and for cause of action would respectfully show the following:

1.

That plaintiff, Southern Stevedoring & Contracting Company, is a partnership composed of Charles Eikel and B. D. Harris of Houston, Texas, and was the employer of defendant-claimant, Earl Porter, against whom the order for the payment of compensation has been made, and is hereafter referred to as plaintiff-employer. That plaintiff, Texas Employers' Insurance Association, is a corporation duly incorporated and existing by virtue of law and is the insurance carrier under the provisions of the Longshoremen's and Harbor Workers' Act, 46 U.S.C.A. Sections 901 et seq., for the plaintiff-employer and is the party liable to the plaintiff-employer on the order herein complained of, and is hereinafter called plaintiff-insurance carrier.

2.

That the defendant, Hugh A. Voris, is the Deputy Commissioner of the Bureau of Employees' Compensation, United States Department of Labor, for the Eighth Compensation

District, with offices in the Post Office Building, Galveston, Texas, whose order awarding compensation is made the basis of this complaint, and is hereinafter referred to as defendant-Deputy Commissioner. That defendant, Earl Porter, is the employee in whose favor this order has been made, and is hereinafter referred to as defendant-claimant.

3.

That this Honorable Court has jurisdiction of the matters complained of in this complaint by provision of the Longshoremen's and Harbor Workers' Compensation Act, Section 21(b), 33 U.S. Code Annotated, Section 921(b), in that the alleged injury occurred at Texas City, within the Southern District of Texas.

4.

That on or about December 19, 1949, the employee was in the employ of Southern Stevedoring & Contracting Company, aboard the SS SOUTHERN STATES upon the navigable waters of the United States. The employee was working aboard the vessel unloading pigs of tin and claims that he was struck on the shoulders and back by falling dunnage or timbers, thereby injuring his left shoulder and back.

5.

That no notice of injury, either orally or in writing, was given to the defendant-Deputy Commissioner in the compensation district in which the alleged injury occurred within thirty (30) days as required by law. That the first knowledge that the defendant-Deputy Commissioner had that defendant-claimant was claiming that he had sustained an injury while employed aboard the SS SOUTHERN STATES was on June 15, 1950, when the said defendant-Deputy Commissioner received a letter from Porter's attorney in Houston, Texas. That the defendant-Deputy Commissioner thereupon

sent the claimant a form, US-201 entitled "Employees First Notice to Deputy Commissioner of Accident or Occupational Disease," which was signed and dated by the defendant-claimant on July 1, 1950, and was received by the Deputy Commissioner on July 5, 1950.

6.

That no notice of injury, either orally or in writing, was given to the plaintiff-employer or to the plaintiff-insurance carrier within thirty (30) days as required by law. That neither the plaintiff-employer or his agent in charge of the business in the place where the injury occurred or the plaintiff-insurance carrier had any knowledge of the alleged injury until July 7, 1950, almost seven months after the alleged injury. That such knowledge was received by the plaintiff-employer on July 7, 1950, in the form of a letter from the defendant-Deputy Commissioner enclosing a copy of the form entitled "Employees First Notice to Deputy Commissioner of Accident or Occupational Disease." Thereafter the plaintiff-employer orally advised the plaintiff-insurance carrier that it has received notice of the injury and subsequently forwarded to the plaintiff-insurance carrier written notice of the alleged injury which was received by the plaintiff-insurance carrier on July 14, 1950. That prior to July 7, 1950, neither the plaintiff-employer nor the plaintiff-insurance carrier had any notice, either oral or written, nor did said plaintiffs have any knowledge that this defendant-claimant or any other employee claimed to have sustained an injury on board the SS SOUTHERN STATES in December, 1949.

7.

That the defendant-claimant was furnished no medical care as the plaintiff-employer and plaintiff-insurance carrier

had no knowledge that any medical care was needed or required nor was any request made to the plaintiff-employer by the defendant-claimant for such medical care nor did the plaintiff-employer, his superintendent or foreman have any knowledge that medical care or treatment was needed or required as a result of this alleged injury. That the physician, or physicians who treated defendant-claimant did not furnish the plaintiff-employer and the defendant-Deputy Commissioner a report of such injury and treatment within twenty (20) days as required by law.

8.

That the defendant-claimant filed his formal claim for compensation dated August 24, 1950, and notice to the plaintiff-insurance carrier that a claim had been filed was dated August 24, 1950. To this formal claim for compensation the plaintiff-employer and plaintiff-insurance carrier filed an answer denying all of the allegations contained in the claim and specifically denied that notice was given to the Deputy Commissioner, employer or insurance carrier as stated in the formal claim, or within the time required by law.

9.

After due notice to the parties, a formal hearing was held before the defendant-Deputy Commissioner, Hugh A. Voris, on September 19, 1950, at Houston, Texas, at which time the parties appeared and testimony was taken. That said formal hearing was continued on November 10, 1950, at Texas City, Texas, at which time the parties again appeared and additional testimony was taken. That the failure to give notice of injury was raised before the defendant-Deputy Commissioner at the first hearing of the claim for compensation in respect to the alleged injury.

10.

That stenographic notes of the testimony taken at the hearings were made and duly transcribed and filed of record with the defendant-Deputy Commissioner, and thereafter on November 29, 1950, the defendant-Deputy Commissioner made certain findings of fact and made an award of compensation, a true and correct copy of said findings of fact and award being attached hereto as Exhibit A and made a part hereof as though set out at length herein.

11.

That the findings of fact and the award of the defendant-Deputy Commissioner set out in Exhibit A attached hereto are not in accordance with the law and should be set aside for the following reasons, among others, to-wit:

(a) There is no evidence or no legally sufficient evidence that the plaintiff-employer or plaintiff-insurance carrier had notice of the injury as required by law.

(b) There is no evidence or no legally sufficient evidence to sustain the defendant-Deputy Commissioner's so-called finding of fact "that the requirements of the Longshoremen's & Harbor Workers' Compensation Act as to notice of injury was complied with by claimant."

(c) The defendant-Deputy Commissioner's so-called finding of fact "that the requirements of the Longshoremen's & Harbor Workers' Compensation Act as to notice of injury was complied with by claimant" is not a finding of fact but a conclusion of law.

(d) There are no findings of fact or insufficient findings of fact to sustain the defendant-Deputy Commissioner's so-called finding of fact "that the require-

ments of the Longshoremen's & Harbor Workers' Compensation Act as to notice of injury was complied with by claimant."

(e) There is no evidence or no legally sufficient evidence that the defendant-claimant's disability, if any, was caused by the alleged injury.

(f) There is no evidence or no legally sufficient evidence to sustain the defendant-Deputy Commissioner's findings of fact "that as a result of said fall, claimant sustained severe contusion and strain of his left shoulder and upper back and other parts of his body; that the injuries have resulted in a condition described as peri-arthritis of the left shoulder, causing limitation of motion in the joint and in other disability."

(g) The defendant-Deputy Commssioner erred in admitting into evidence and in considering written medical reports from various doctors (Exhibits C, D, E, F, and G attached to transcript of testimony taken at Texas City, Texas, on November 10, 1950, and medical report later made part of record from the United States Marine Hospital in Galveston, Texas) over the objection of the plaintiff-employer and plaintiff-insurance carrier that they were hearsay. That said plaintiffs had not been accorded an opportunity to cross-examine the doctors who made the reports for a true and full disclosure of the facts and that said reports were opinions and conclusions of the doctors and not reliable, substantial or probative evidence in the absence of the plaintiffs' being accorded their right to cross-examine the doctors as required by law including amongst others the Administrative Procedures Act.

(h) There is no evidence or no legally sufficient

evidence to sustain the defendant-Deputy Commissioner's finding of fact "that as a result of the injury sustained, claimant was wholly disabled from December 19, 1949, to the present time and that such disability continues, and he is entitled to 46-5/7 weeks compensation, to and including the date of last hearing held on November 10, 1950, at $12 per week, amounting to $560.57."

(i) There is no evidence or no legally sufficient evidence to sustain the defendant-Deputy Commissioner's award that the plaintiff-employer and plaintiff-insurance carrier pay to defendant-claimant compensation in a lump sum up to November 10, 1950, amounting to $560.57 and the sum of $12.00 per week beginning with November 11, 1950, until the further order of the defendant-Deputy Commissioner.

(j) There is no evidence or no legally sufficient evidence to sustain the defendant-Deputy Commissioner's finding of fact "that claimant is entitled to such further medical treatment as is needed for recovery from the effects of the injury at the expense of the employer and carrier."

(k) There is no evidence or no legally sufficient evidence to sustain the defendant-Deputy Commissioner's award "that said employer and insurance carrier shall furnish claimant with such medical treatment as may be needed for recovery from the effects of his injury."

(l) There is no evidence or no legally sufficient evidence to sustain the defendant-Deputy Commissioner's finding of fact "that his average weekly wage for the year prior to injury amounted to the sum of $18.00."

(m) There is no evidence or no legally sufficient evidence to sustain the defendant-Deputy Commissioner's finding "that the claimant requested the foreman to send him to a doctor."

(n) That there is no evidence or no legally sufficient evidence to sustain the defendant-Deputy Commissioner's so-called finding of fact "that the employer or insurance carrier are liable for reasonable charges for such treatment received to date."

(o) There are no findings of fact or insufficient findings of fact to sustain the defendant-Deputy Commissioner's so-called finding of fact "that the employer or insurance carrier are liable for reasonable charges for such treatment received to date."

(p) The defendant-Deputy Commissioner's so-called finding of fact "that the employer or insurance carrier are liable for reasonable charges for such treatment received to date" is not a sufficient finding of fact but a conclusion of law without adequate fact finding in support thereof.

(q) There is no evidence or no legally sufficient evidence that the defendant-claimant requested the plaintiff-employer or the plaintiff-insurance carrier to furnish him any medical care.

(r) There is no evidence or no legally sufficient evidence that the plaintiff-employer, its superintendent, its foreman or the insurance carrier had any knowledge that the defendant-claimant needed any medical care.

12.

That the findings of fact and award of the defendant-Deputy Commissioner are not in accordance with law and

the plaintiffs herein will be irreparably damaged if an interlocutory injunction is not granted and the payment of compensation under the award stayed pending the final hearing on this appeal and plaintiffs would respectfully show that said award contains a lump sum payment of $560.57, that on information and belief the defendant-claimant to whom the money is ordered paid is financially irresponsible, that he has no funds, owns no property, has been without funds for some time even prior to the alleged injury, that if the money is paid to him in a lump sum it will be spent immediately and forever gone, that once said money is paid to defendant-claimant it would be impossible for these plaintiffs to be reimbursed for the money thus paid, and that defendant-claimant is not only insolvent but is wholly irresponsible so far as the ability or probability of ever being able or willing to restore to plaintiffs any portion of the sums covered by the award in the event plaintiffs' application to set it aside is granted that under such circumstances the right of appeal is a naked, useless right and to deny effectual relief against the payment to a party who will not be able or willing to repay will be to deprive plaintiffs of their constitutional rights to due process of law and a determination by a constitutional court of its basic rights.

13.

That the claim for compensation and the duly transcribed notes of the testimony taken at the formal hearing and the award of the defendant-Deputy Commissioner are all in the custody of the defendant-Deputy Commissioner and it is necessary that these papers and all other relevant matter in the possession of the defendant-Deputy Commissioner be placed in the hands of this Honorable Court in order that it may determine whether or not the award

of the defendant-Deputy Commissioner is in accordance with law.

14.

That plaintiffs herein have no adequate remedy at law and have no means for the redress of the wrongs complained of herein except through injunction proceedings, mandatory or otherwise, to set aside the award referred to herein.

WHEREFORE, plaintiffs pray

(1) That a mandatory injunction be granted by and issued from this Honorable Court to the defendant-Deputy Commissioner for the Eighth Compensation District of the United States Department of Labor, Bureau of Employees' Compensation, commanding him within three days from receipt thereof to deliver to this Court or the Clerk thereof, a certified transcript of the claim for compensation, the answer filed thereto, the transcribed notes of testimony, the findings of fact and award of compensation, and all other papers or matters relevant to this claim or to the hearings conducted by him in the case of Earl Porter, Claimant vs. Southern Stevedoring & Contracting Company, Employer, Texas Employers' Insurance Association, Insurance Carrier, being case No. 61-1970, said hearings having been held on September 19, 1950, at Houston, Texas, and on November 10, 1950, at Texas City, Texas.

(2) That the defendant-Deputy Commissioner and defendant-claimant be cited to appear and show cause, if any there be, why an interlocutory injunction should not be issued restraining the said defendants from enforcing said award of compensation.

(3) That an interlocutory injunction be issued restraining the defendant-Deputy Commissioner and defendant-

claimant from enforcing said award of compensation and staying the payments required by the award pending the final decision on this appeal.

(4) That a permanent injunction be granted by and issued from this Honorable Court to the defendant-Deputy Commissioner for the Eighth Compensation District and to the defendant-claimant perpetually restraining said defendants from enforcing the aforesaid award of compensation.

(5) That a mandatory injunction be granted by and issued from this Honorable Court to the defendant-Deputy Commissioner for the Eighth Compensation District, directing him to set aside the findings of fact heretofore made, and that he be ordered to make an order dismissing and disallowing said claim.

(6) That plaintiffs be granted such other and further relief as they may show themselves justly entitled to receive.

E. D. VICKERY
Of Royston & Rayzor
625 Cotton Exchange Building
Houston, Texas
Attorneys for Plaintiffs

The State of Texas §
County of Harris §

BEFORE ME, the undersigned authority, on this day personally appeared E. D. VICKERY and upon being duly sworn deposes and says:

I am an associate member of the firm of Royston & Rayzor, attorneys for the plaintiffs herein. I have read the foregoing complaint and know the contents thereof to be true

to the best of my knowledge except as to the matters therein stated to be alleged upon information and belief and as to those matters I believe it to be true.

E. D. VICKERY

Subscribed and Sworn to Before Me this 8 day of December, 1950.

DOROTHY PRATHERO
Notary Public in and for Harris County Texas.

(Exhibit A)

U. S. Department of Labor
BUREAU OF EMPLOYEES' COMPENSATION
Eighth Compensation District

In the matter of the claim for compensation under the Longshoremen's and Harbor Workers' Compensation Act.

Earl Porter	Insurance Carrier
Claimant	Compensation Order.
vs.	
Southern Stedoring & Contracting Company	Award of Compensation.
Employer	Case No. 61-1970
Texas Employers' Insurance Association	
Insurance Carrier	

Such investigation in respect to the above entitled claim having been made as is considered necessary, and hearings having been duly held in conformity with law, the Deputy Commissioner makes the following:

FINDINGS OF FACT.

That on the 19th day of December 1949, the claimant above named was in the employ of the employer above named at Texas City, in the State of Texas, in the Eighth Compensation District, established under the provisions of the Longshoremen's and Harbor Workers' Compensation Act, and that the liability of the employer for compensation under said Act was insured by Texas Employers' Insurance Association; that on said day, claimant herein, while performing service for the employer as a longshoreman on the SS SOUTHERN STATES then upon navigable waters of the United States, sustained personal injury resulting from falling onto dunnage (scrap lumber and other material) in the hold of the ship; that at said time, claimant, with a number of other longshoremen, was making a frantic effort to escape from the hold of the ship on account of a flash fire due to burning of rubber that had become ignited as same was after certain pieces of cargo had fallen and broken an electric-light wire; that as a result of said fall, claimant sustained severe contusion and strain on his left shoulder and upper back and other parts of his body; that said injuries have resulted in a condition described as peri-arthritis of the left shoulder, causing limitation of motion in the joint, and in other disability; that notice of said injury was given immediately to the foreman directly in charge of the gang in which claimant worked, but that, for unexplained reasons, a report of injury was not furnished the Bureau of Employees' Compensation, and that the record in conflicting as to whether or not the matter was reported to the timekeeper, who was responsible for securing medical treatment; that it is hereby found that the requirements of the Longshoremen's and Harbor Workers' Compensation Act as to notice of injury was

complied with by claimant; that the claimant requested the foreman to send him to a doctor, but this was not done and the employer has not furnished the employee with medical treatment as required by Section 7 (a) of said Act; that the employer and insurance carrier are liable for reasonable charges for such treatment received to date; that claimant is entitled to such further medical treatment as is needed for recovery from the effects of the injury at the expense of the employer and carrier; that evidence could not be secured as to exact amount of claimant's earnings for the year prior to his injury, but it is hereby found, from his own statements and such further evidence as could be secured, that his average weekly wage for the year prior to injury amounted to the sum of $18.00; that as a result of the injury sustained, claimant was wholly disabled from December 19, 1949 to the present time and that such disability continues, and he is entitled to 46-5/7 weeks compensation, to and including the date of last hearing held on November 10, 1950 at $12.00 per week, amounting to $560.57, no part of which has been paid;

Upon the foregoing facts, the Deputy Commissioner makes the following:

AWARD.

That the employer, Southern Stevedoring & Contracting Company, and the insurance carrier, Texas Employers' Insurance Association, shall pay to the claimant compensation as follows: The sum of $560.57 as of November 10, 1950, and the further sum of $12.00 per week, payable each two weeks, beginning with November 11, 1950 until the further order of the Deputy Commissioner; that said employer and insurance carrier shall furnish claimant with

such medical treatment as may be needed for recovery from the effects of his injury.

Given under my hand at Galveston, Texas, this 29th day of November 1950.

/s/ Hugh A. Voris
HUGH A. VORIS
Deputy Commissioner
Eighth Compensation District.

PROOF OF SERVICE

I hereby certify that a copy of the foregoing Compensation Order—Award of Compensation—was sent by registered mail to the claimant, to the employer, and to the insurance carrier at the last known address of each as follows:

Earl Porter	Box 615 Madisonville, Texas
Southern Stev. & Contr. Co.	Cotton Exchange Bldg.
Texas Employers' Insurance Asn.	Houston 2, Texas
Attn. Mr. Smith Pettigrew	2315 Ave. J. Galveston, Texas

By regular mail to:

Royston & Rayzor, Attys. at Law	Cotton Exchange Bldg.
Attn.: Mr. E. D. Vickery	Houston 2, Texas
Texas Employers' Insurance Asn.	2502 Fannin St.
Attn.: Mr. R. Schwartz	Houston 2, Texas

Bureau of Employees' Compensation U. S. Department of Labor Washington 25, D. C.

/s/ Hugh A. Voris
HUGH A. VORIS
Deputy Commissioner

Mailed: November 29th, 1950

ac

18 ORDER GRANTING PRELIMINARY INJUNCTION, ETC.

(Filed December 15, 1950)

(Title Omitted)

"12-15-50: Preliminary Injunction granted, temporarily restraining enforcement of lump sum Award of the Deputy Commissioner, but not the weekly payments of $12.00 each awarded by the Deputy Commissioner. Injunction Bond of Plaintiff set at $1000.
This case is set for hearing on the merits before me on January 3, 1951.
Clerk will notify Counsel.

T. M. K."

19 ORDER GRANTING INTERLOCUTORY INJUNCTION, ETC.

(Filed December 19, 1950)

(Title Omitted)

On this the 15th day of December, 1950, in the above entitled and numbered cause, came on to be heard plaintiffs' application for an interlocutory injunction upon an order to show cause granted by this court on the 8th day of December, 1950, the plaintiffs appearing by and through their attorneys of record, the defendant-claimant, Earl Porter, appearing in person and the defendant-deputy commissioner, Hugh A. Voris, appearing by and through the United States Attorney, and the parties at interest having had not less than three days' notice of said hearing, and

the court having heard and considered the plaintiffs' verified complaint, the evidence introduced by both the plaintiffs and the defendants and the arguments of counsel for the respective parties and it appearing to the court that irreparable damage would otherwise ensue to the plaintiff-employer and plaintiff-insurance carrier if the payment of the lump sum award of $560.57 were not stayed pending the fiscal decision in this cause and the court specifically finding that such irreparable damage would otherwise ensue to the plaintiff-employer and plaintiff-insurance carrier for the reasons which fully appear from the evidence presented, consisting of the testimony of the defendant-claimant and the entire record of the proceedings before the defendant-deputy commissioner, offered by all parties without any objection whatsoever, and herein referred to as follows:

(1) That without in any way passing on the merits of this cause, it appears from the evidence herein that plaintiff may be entitled to some relief on the question of notice, and maybe on other questions and at least it is something that the plaintiff is entitled to have the court carefully examine;

(2) That the lump-sum award was accumulated by reason of the fact that the claim was not properly pressed by the injured man, the defendant-claimant Earl Porter, allowing many weeks to elapse so that there accumulated this rather large sum of $560.57 for this kind of case, which would not have been accumulated if the matter had been disposed of or if he had been diligent in filing his claim;

(3) That it fully appears here that the defendant-claimant Earl Porter is financially insolvent and irresponsible and that if the plaintiffs were compelled to

pay this lump sum award they would never get it back;

(4) That the case on its merits could be heard on as early a date as the attorneys for the defendants would be ready to submit it, and that the case was set for submission on January 3, 1951, if the government is ready at that time, after which a decision would be worked out as quickly as possible;

and it appearing and the court specifically finding that the nature of such irreparable damage is as stated in paragraphs (1) through (4) hereinabove, and the court therefore being of the opinion that the interlocutory injunction should be granted, now, therefore, it is

ORDERED, ADJUDGED and DECREED that an interlocutory injunction be, and it hereby is, granted plaintiffs against the said defendant-deputy commissioner and the defendant-claimant, their agents, servants, employees, attorneys, and anyone acting by or through or for them, restraining them from enforcing that portion of the defendant-deputy commissioner's award of compensation ordering the plaintiffs to pay a lump sum of $560.57 to the defendant-claimant, upon the condition that the plaintiffs pay to the defendant-claimant weekly compensation at the rate of $12.00 per week, payable each two weeks, beginning with November 11, 1950, pending the final decision in this cause, and

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that plaintiffs post a bond in the sum of $1,000.00 conditioned for the payment of such costs, damages, and the payment of the award herein and the final judgment of this court as may be incurred or suffered by

any party who shall be found to have been wrongfully enjoined or restrained, and

IT IS FURTHER ORDERED, ADJUDGED and DECREED that said interlocutory injunction remain in full force and effect until the further order of this court.

s/T. M. KENNERLY
Judge

Approved as to form:
ROYSTON & RAYZOR
By: E. D. VICKERY
Attorneys for Plaintiffs

BRIAN S. ODEM
United States Attorney

W. G. WINTERS, JR.
Assistant United States Attorney
Attorneys for Defendants

22 FINDINGS OF FACT AND CONCLUSIONS OF LAW

(Filed December 20, 1950)

(Title Omitted)

December 19, 1950

The attached transcript of remarks by the Judge as taken down by the Court Reporter are filed with the Clerk as Findings of Fact and Conclusions of Law.

T. M. KENNERLY
Judge

The Court: I think I can dispose of it.

I am going to grant the restraining order or injunction against the lump-sum award, with the understanding that they will go forward and pay the weekly award pending this proceeding here.

I am making that disposition of the petition for preliminary injunction for the following reasons:

(1) I have not, of course, examined the record. I have only listened to the comment of counsel about the record. And I am not passing on the merits of the case at all. I may do one thing or the other when I get to the merits. I am impressed, however, listening to the counsel that plaintiff may be entitled to some relief on the question of notice, and maybe other questions. In other words, the record, as stated by counsel, impresses me that it is something that the plaintiff is entitled to have the court carefully examine.

(2) This lump-sum award was accumulated by reason of the fact that the claim was not properly pressed by the injured man, Earl Porter, allowing many weeks to elapse so that there accumulated this rather large sum for this kind of case, between $500.00 and $600.00, which would not have been accumulated if the matter had been disposed of or if he had been diligent in filing his claim.

Of course, it may be true, and probably is true, that he didn't know the law, but I do not think plaintiffs ought to be prejudiced by that fact.

(3) It fully appears here that the plaintiff if compelled to pay this lump-sum award would never get it back, because, while there is no reflection on Porter for being in that condition, because we are all perhaps in that condition, including the court, these days, out of funds and so on, but

it is a fact that the plaintiff will never get his money back if it is paid.

(4) I am willing to hear now or Monday, this coming Monday or Tuesday, the matter of the case on the merits and will dispose of it as quickly as I possibly can. I understand that the Government, that is representing Porter's interest here in the case, will not be ready that soon.

However, in granting the injuntion, I am going to set the matter down for January 3, and if you are ready at that time to submit it, I will take the submission of it and work it out as quickly as I can.

I will take the docket sheet with me.

I wish you would write that up for me, Mr. Etter.

26 MOTION TO REMAND RECORD TO DEPUTY COMMISSIONER

(Filed January 17, 1951)

(Title Omitted)

Now comes Brian S. Odem, United States Attorney for the Southern District of Texas, and respectfully moves the Court to enter an Order to remand the record in the above-styled cause of action to Hugh A. Voris, Deputy Commissioner, Eighth Compensation District, United States Department of Labor, Bureau of Employees' Compensation, for the purpose of having said Deputy Commissioner review the said record and take such additional testimony, if any, as either party may offer, to make whatever additional findings relating to the circumstances and manner in which the employer or carrier received notice of injury and to file a supplemental order containing a determination based upon

said findings as to whether or not notice of injury was duly given in writing and if such notice was received otherwise than in writing, whether or not the employer or carrier had knowledge of the injury, and the employer or carrier has not been prejudiced by failure to give such notice in writing, and further whether or not the Deputy Commissioner excuses such failure to give notice in writing on the ground that for some satisfactory reason such notice could not be given in writing under Section 912, Title 33, United States Code, all without prejudice to application by any of the parties for judicial review of such supplemental order when filed.

BRIAN S. ODEM
United States Attorney

By W. G. WINTERS, JR.
W. G. Winters, Jr.
Assistant United States Attorney

I certify that a copy of the foregoing Motion has been served upon Messrs. Royston & Rayzor, attorneys for plaintiff, by mailing same this 17 day of Jan., 1951.

W. G. WINTERS, JR.
WGW:cp W. G. Winters, Asst. U.S. Attorney

27 MEMORANDUM IN OPPOSITION TO GOVERNMENT'S MOTION TO REMAND THE RECORD TO DEPUTY COMMISSIONER

(Filed January 22, 1951)

(Title Omitted)

The motion and supporting brief filed by the Government is a confession of course that the plaintiffs are en-

titled to the injunction as the present award appealed from is not in accordance with law.

They seek to escape the consequences of these fatal omissions by the Deputy Commissioner by suggesting that the matter be remanded to him to make findings essential to a valid award.

Since it is our contention that there is no proper finding of adequate notice as required by the statute, we have no quarrel with their confession that the record is now inadequate. We think, however, that the practice of remanding for additional finding is not the proper one.

First, there is no showing in the motion that the present facts in the record would support any such findings and on the contrary it is our position as reflected in the petition to set aside the award that there is no such evidence in the entire record. If that point is correct and that alone can be determined by this Court, then it is a useless act to send it back to make findings which are not supported by adequate proof.

If, on the other hand, it being conceded that there is not an adequate finding at the present time and perhaps insufficient evidence which would then require on rehearing by the Commissioner the taking of additional proof, the situation is simply one in which an award has been made requiring us under the pain of heavy penalty to make substantial payments without any valid basis for it. Clearly the law says that if awards are not in accordance with law they shall be enjoined. That is not meant to tie the hands of the Commissioner from proceeding further. It is simply a recognition by the law that if the evidence or the procedure followed by the Deputy Commissioner is erroneous, the employer and his insurance carrier cannot be compelled to pay out money.

The vice of the proposal here is illustrated in our own

case: On the award being made (which the Government now concedes to be not in accordance with law) we filed the petition to set aside the award, alleging amongst others the very grounds now conceded by the Government. To avoid the payment of the matured accelerated portion of some $500.00 to $600.00, we sought an injunction and had a formal hearing before the Court. On the assumption that the Government was really anxious to have these matters disposed of expeditiously for the benefit of injured longshoremen. we suggested on the expectation that the hearing would be held almost immediately, that we would consent to the payment of weekly payments under the award plus those which had accrued from the date of the award down to the date of the hearing. In that hearing the Government took the position that we were forced to pay all and no portion could be stayed. Within a few days, presumably on instructions of the Attorney General, the Government then moved to postpone the hearing from January 3, 1951, as fixed by the Court, until the full 60-day period would be up. Now they come in and ask that an award admittedly illegal be corrected by additions of substance, but nothing is said about the continued payment under the threat of the award, the coercion of penalties in the event of failure to pay, or our position under the injunction staying the payment of a part of the award.

Clearly we do not think that we should have to continue to make payments of any kind while this matter is still pending before the Deputy Commissioner. If the award is legally sufficient enough to require us to make payment and expose us to penalties on a failure to do so, then it is sufficiently adequate to enable the Court to determine the basic issues of law now and if he agrees with all parties he would have to enter a permanent injunction; on the other hand if, as claimed, it is a matter which can be corrected

by supplemental findings, the award is still lacking in legal validity and we ought not to be compelled to pay or incur the risk of penalties of a severe nature while the Deputy Commissioner considers the claim further.

We think that the orderly thing to do, the only legal thing to do in view of the state of the record and the admissions of the Government, is for the Court to proceed on these admissions to find judicially that the present award is not in accordance with law. That being done, the injunction is automatic. That enjoins the enforcement of the present award. It does not enjoin the Deputy Commissioner from considering the case further or on new evidence making such findings as he legally can.

But certainly if there is any remand the order of remand ought to provide that pending its redetermination and the issuance of a new award or supplemental award based thereon, the payments of all compensation is stayed, and in the event an award is issued directing the payment of the same or similar payment as found in the original award, that the further payment of that amended award be stayed in accordance with the order of the Court entered after the open hearing on the preliminary injunction. (This latter is merely to avoid the necessity of our reappearing before the Court for a hearing to revive the modified stay order.

staying payment of the matured amount but continuing payment of the weekly payments as they become due.)

Respectfully submitted,

JOHN R. BROWN
John R. Brown

E. D. VICKERY
E. D. Vickery

Royston & Rayzor
625 Cotton Exchange Bldg.,
Houston, Texas.
Of Counsel.

Copy of the within Brief served upon Brian S. Odem, United States Attorney, by mail this 22nd day of January, 1951.

C. D. VICKERY
Of Counsel

32 MEMORANDUM OF COURT REMANDING CASE TO DEPUTY COMMISSIONER, GRANTING TEMPORARY INJUNCTION

(Filed March 1, 1951)

(Dated February 28, 1951)

(Title Omitted)

Memorandum:

This is a suit by Plaintiffs to set aside an Award of the Deputy Commissioner under the Longshoremen's and Harbor

Workers' Act (Title 46, Section 901, et seq., U.S.C.A.) in connection with an alleged injury to Earl Porter. On December 15, 1950, Preliminary Injunction was granted, temporarily restraining the enforcement of the lump sum award of the Deputy Commissioner, but not the award of weekly payments of $12 each. Because of the issue of such Injunction and the claimed financial condition of Porter, the case was set for January 3, 1951. Defendants were not ready on that date and declined to get ready to try on that date, and the case was accordingly passed. Defendants on January 17, 1951, filed a Motion to Remand the case to the Deputy Commissioner to make additional Findings of Fact. In the Government's Brief on that question, it is said:—

> "Since the Findings of the Deputy Commissioner are incomplete and do not contain specific findings on the question of notice, it is impossible for the Court to determine whether or not the compensation order is in accordance with law or not. Likewise, since there are no findings on the issue of notice, it is impossible to determine whether or not there is evidence to support the 'finding' of sufficient notice."

Plaintiffs complain of this further delay and say that if the case is sent back to the Deputy Commissioner, Plaintiffs should not in the meantime be required to pay the weekly payments of $12 each.

I think Plaintiffs are right. If, as the Government suggests, the Award is not sufficient to stand up here and the matter is remanded to the Deputy Commissioner, Plaintiffs should in the meantime be relieved of the necessity of paying the $12 weekly award.

The case will be sent back to the Deputy Commissioner for further hearing, findings, and conclusions, but Injunction will issue, restraining the collection from Plaintiffs of



such weekly award while the Deputy Commissioner is doing so.

T. M. KENNERLY
Judge

35 MOTION TO REMAND GRANTED, TEMPORARY INJUNCTION WILL ISSUE

(Dated February 28, 1951)

(Entered March 1, 1951)

(Title Omitted)

"2-28-51: Upon application of Defendant, this case will be sent back to the Deputy Commissioner for further hearing, findings, and conclusions, but injunction will issue, restraining the collection from Plaintiffs of the weekly award of $12 each while the matter is pending before the Commissioner.
See Memorandum filed.
Clerk will notify counsel to prepare and present appropriate Order within five days.

T. M. K."

36 ORDER TO REMAND

(Filed March 9, 1951)

(Title Omitted)

On this the 28th day of February, 1951, in the above entitled and numbered cause, came on to be heard defendants'

motion to remand the case of the Deputy Commissioner to make additional findings of fact, the plaintiffs appearing by and through their attorneys of record, and the defendants appearing by and through the United States Attorney, and the court having considered the motion, the evidence and the briefs filed by plaintiffs and defendants, and the court having filed its findings of fact and conclusions of law dated February 28, 1951, which findings and conclusions are hereby incorporated herein by reference, and being of the opinion that this case should be remanded to the deputy commissioner for further hearing, findings, and conclusions, and being of the opinion that injunction should issue restraining the collection from plaintiffs of the weekly award of TWELVE ($12.00) DOLLARS per week, heretofore specifically excepted from the interlocutory injunction entered in this cause on December 15, 1950, now, therefore it is

ORDERED, ADJUDGED and DECREED that this cause be, and it hereby is remanded to the Deputy Commissioner for further hearing, findings, and conclusions, subject to the further orders of this court, to which action of the Court plaintiffs duly excepted, and

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the collection of the TWELVE ($12.00) DOLLARS weekly award of compensation to the defendant-claimant, heretofore specifically excepted from the interlocutory injunction entered in this cause on December 15, 1950, be, and it hereby is, enjoined and stayed until the further order of this court, and

IT IS FURTHER ORDERED, ADJUDGED and DECREED that in all other respects the interlocutory injunction heretofore entered on December 15, 1950 remain in full force and effect until the further order of this court.

DONE AT HOUSTON, TEXAS, this 9th day of March, 1951.

(s) T. M. KENNERLY
Judge

Approved as to form:
ROYSTON & RAYZOR
By: C. D. VICKERY
Attorneys for Plaintiffs

BRIAN S. ODEM
United States Attorney

W. G. WINTERS, JR.
Assistant United States Attorney
Attorneys for Defendants

WGW:cp

38 PLAINTIFF'S SUPPLEMENTAL COMPLAINT

(Filed April 3, 1951)

(Title Omitted)

To the Honorable T. M. Kennerly, Judge of said Court:

Now comes CHARLES EIKEL and B. D. HARRIS, doing business as Southern Stevedoring & Contrating Company, and Texas Employers' Insurance Association, hereinafter referred to as plaintiffs, complaining of Hugh A. Voris, Deputy Commissioner, and Earl Porter, claimant hereinafter referred to as defendant-Deputy Commissioner and defendant-claimant, respectively, and with leave of court first had and obtained, files this its first supplemental complaint and would respectfully show the following:

1.

Plaintiffs reallege and reaffirm each and every, all and singular the allegations and prayers contained in its original complaint filed in the above entitled and numbered cause on December 8, 1950, and hereby incorporate said original complaint herein by reference with the same force and effect as if set out at length herein.

2.

That upon motion of the defendants in which it was admitted that the defendant-Deputy Commissioner's findings of fact were incomplete and not legally sufficient on which to base an award for payment of compensation in their original form as shown in Exhibit A attached to the original complaint herein, by order of the court dated March 9, 1951, this Honorable Court remanded this cause to the defendant-Deputy Commissioner for further hearing, findings and conclusions, subject to the further orders of this court.

3.

That on the 14th of March, 1951, the defendant-Deputy Commissioner made an order amending and supplementing the order of award of compensation previously made by him on the 29th day of November, 1950, (Exhibit A attached to Original Complaint), a true and correct copy of said amended and supplemental order of the 14th day of March, 1951, being attached hereto as Exhibit B and made a part hereof as though set out at length herein.

4.

That the order amending and supplementing order of award of compensation (Exhibit B) and the original award of compensation (Exhibit A), taken separately or collec-

tively, are not in accordance with the law and should be set aside for the following reasons, among others, to-wit:

(a) For each and all of the reasons heretofore set forth in plaintiffs' original complaint, in particular, but not limited to, those set forth in paragraph 11, subparagraphs (a) through (r) which are hereby incorporated by reference as though set out at length herein.

(b) There is no evidence or no legally sufficient evidence to sustain the defendant-Deputy Commissioner's so-called finding of fact "that the agent of the employer in charge of the business in the place where the injury occurred had knowledge of the injury".

(c) There is no evidence or no legally sufficient evidence to sustain the defendant-Deputy Commissioner's so-called finding of fact "that the employer has not been prejudiced by failure to give written notice".

(d) There is no evidence or no legally sufficient evidence to sustain the defendant-Deputy Commissioner's so-called finding of fact excusing the failure of the defendant-claimant to give notice in writing as required by Section 12(b) of the Longshoremen's and Harbor Workers' Compensation Act.

(e) There is no evidence or no legally sufficient evidence to sustain the defendant-Deputy Commissioner's so-called finding of fact excusing the failure of the defendant-claimant to give notice in writing as there is no evidence or no legally sufficient evidence that for some satisfactory reason such notice could not be given.

(f) There is no evidence or no legally sufficient evidence to sustain the defendant-Deputy Commissioner's

so-called findings of fact which are given as reasons for the defendant-Deputy Commissioner's so-called finding of fact excusing the failure of the defendant-claimant to give notice in writing.

WHEREFORE, plaintiffs pray,

(1) That they be granted the relief heretofore prayed for in the original complaint which prayers are incorporated herein by reference as though set out at length.

(2) That said relief as prayed for in the original complaint herein be granted as to the order amending and supplementing order of award of compensation said prayers having been incorpocated herein by reference as though set forth at length herein, both as to the amending and supplementing order (Exhibit B) taken separately and in connection with the original order (Exhibit A) heretofore entered.

(3) That plaintiffs be granted such other and further relief as they may show themselves justly entitled to receive.

E. D. VICKERY
Of Royston & Rayzor
625 Cotton Exchange Building
Houston, Texas
Attorneys for Plaintiffs

The State of Texas §
County of Harris §

BEFORE ME, the undersigned authority on this day personally appeared E. D. VICKERY and upon being duly sworn deposes and says:

I am an associate member of the firm of Royston &

Rayzor, attorneys for plaintiff herein. I have read the foregoing supplemental complaint and know the contents thereof to be true to the best of my knowledge except as to the matters therein stated to be alleged upon information and belief and as to those matters I believe it to be true.

E. D. VICKERY

Subscribed and sworn to before me this 3 day of April, 1951.

MRS. LOUISE HILL
Notary Public in and for
Harris County, Texas

In the matter of the claim for compensation under the Longshoremen's and Harbor Workers' Compensation Act.

Earl Porter
Claimant

vs

Southern Stevedoring & Contracting Company
Employer

Texas Employers' Insurance Association
Insurance Carrier

Compensation Order.
Case No. 61-1970.
Order amending and supplementing order of award of compensation.

Compensation Order having been entered herein under date of November 29, 1950 awarding compensation for total disability to the above named claimant on account of an injury incurred by him December 19, 1949 while employed by the employer above named, and appeal having been taken from said Order to the U. S. District Court for the Southern District of Texas, Houston Division, and the Court having found said Order incomplete and incon-

clusive on the question of notice of injury to the employer and having remanded the matter to the Deputy Commissioner for further hearing if necessary, and findings to complete said record, and it appearing that all available information has been secured and that no further hearing is necessary, said Order of November 29, 1950 is hereby supplemented and amended as to the question of notice of injury as follows:—

That written notice of injury was not given within thirty days as provided by Section 12(b) of the Longshoremen's and Harbor Workers' Compensation Act, but that the agent of the employer in charge of the business in the place where the injury occurred had knowledge of the injury and that the employer has not been prejudiced by failure to give written notice; that failure of the employee to give notice in writing as provided by Section 12(b) is hereby excused for the following reasons:—that claimant reported the injury verbally to the employer's foreman in charge of the gang in which claimant was working at the time of injury, immediately following the injury; that said notice was repeated the next day; that claimant is an illiterate man, testifying that he is unable to read and only writes his name with difficulty; that he was not a regular longshoreman and had only worked as a longshoreman one night prior to the date of his injury, and was not acquainted with the requirements as to reporting an injury; that he was not given any instructions as to whom he should report an injury; that his immediate foreman was the only representative of the employer known to him, and that said foreman testified that he had reported the injury to a timekeeper of the employer; that it is shown by the testimony of several fellow-workers that claimant was complaining of injury at the time said injury occurred and that his injury was generally known to these fellow-employees following a hurried

exit from the ship due to a flash fire; that the timekeeper has testified that he immediately visited the scene of the accident, and could easily have inquired as to injuries among the gang of longshoremen but disclaims knowledge of this injury at the time; that claimant's verbal report of injury to his immediate foreman constitutes the usual method of reporting such injuries, and that it is clearly due to the negligence of agents of the employer that said injury was not reported and claimant furnished with medical treatment at the time the injury occurred.

Given under my hand at Galveston, Texas, this 14th day of March 1951.

/s/ Hugh A. Voris
HUGH A. VORIS
Deputy Commissioner
Eighth Compensation District.

PROOF OF SERVICE.

I hereby certify that a copy of the foregoing Compensation Order—Order Amending and Supplementing Order of Award of Compensation—was sent by registered mail to the claimant, to the employer, and to the insurance carrier at the last known address of each as follows:

Earl Porter Box 675 Madisonville, Texas
Southern Stev. & Contr. Co. Cotton Exchange Bldg. Houston 2, Texas

Texas Employers' Insurance Assn. Attn.: Mr. Smith Pettigrew 2315 Ave. J Galveston, Texas

By regular mail to:

Royston & Rayzor, Attys. at Law
Attn.: Mr. E. D. Vickery Cotton Exchange Bldg.
Houston 2, Texas

Texas Employers' Insurance
Assn. Attn.: Mr. R. Schwartz 2502 Fannin St.
Houston 2, Texas

Mr. Ward E. Boote, Asst. Solicitor
Employees' Compensation Division U. S. Department of Labor—Washington 25, D.C.

/s/ Hugh A. Voris
HUGH A. VORIS
Deputy Commissioner

Mailed: March 14th, 1951.
ac

45 ANSWER OF HUGH A. VORIS

(Filed June 7, 1951)

(Title Omitted)

NOW COMES Hugh A. Voris, Deputy Commissioner, and in answer to the original complaint and supplemental complaint of the plaintiffs, Charles Eikel and B. D. Harris, dba Southern Stevedoring & Contracting Co. and the Texas Employers' Insurance Association, says as follows:

I.

(a) In answer to the allegations contained in the original complaint filed herein on December 9, 1950, defendant Hugh A. Voris says:

1. The allegations of paragraphs 1, 2, 3 and 4 of said original complaint are admitted.

2. The allegations of paragraphs 5, 6 and 7 of said original complaint are denied.

3. The allegations of paragraphs 8, 9 and 10 are admitted upon information and belief.

4. The allegations of paragraphs 11 and 12 of said original complaint are denied.

5. The allegations of paragraphs 13 of said original complaint are admitted.

6. The allegations of paragraph 14 of said original complaint are denied.

(b) In answer to the allegations of the supplemental complaint of said plaintiffs, filed herein, defendant Hugh A. Voris says:

1. In answer to paragraph 1 of said supplemental complaint, defendant says that the allegations contained therein and adopted by reference therein have been previously answered under sub-paragraph (a) above, to which reference is hereby made.

2. In answer to the allegations of paragraph 2 of said supplemental complaint, defendant says that it is true that this action and record was remanded to the Deputy Commissioner for further proceedings in accordance with the terms of the order of this Court dated March 9, 1951.

3. Defendant admits the allegations of paragraph 3 of said supplemental complaint.

4. Defendant denies the allegations of paragraph 4 of said supplemental complaint.

II.

The defendant says that the original compensation order and award of compensation entered by the Deputy Commissioner on the 29th day of November 1950, as amended by the compensation order amending and supplementing the order and award of compensation dated March 14, 1951, is in accordance with law and should be sustained.

WHEREFORE, premises considered, defendant prays and demands that the complaint and supplemental complaint of the plaintiffs herein be dismissed and that the award of the Deputy Commissioner be in all things affirmed.

BRIAN S. ODEM
United States Attorney
By W. G. WINTERS, JR.
W. G. Winters, Jr.
Assistant United States Attorney

I certify that a copy of the foregoing answer has been served upon Messrs. Royston & Rayzor, attorneys for plaintiff, by mailing same this 7 day of June, 1951.

W. G. Winters, Jr.
W. G. WINTERS, JR.
Assistant United States Attorney
WGW:rbm

FEDERAL SECURITY AGENCY
Bureau of Employees' Compensation
Office of Deputy Commissioner
H. A. Voris
Administering Longshoremen's and Harbor Workers' Compensation Act

LEAVE THIS SPACE BLANK

Case No.....
Insurance Carrier's No.....

EMPLOYEE'S CLAIM FOR COMPENSATION

(To be filed with the Deputy Commissioner in accordance with sections 13 and 19 of the law)

1. Name of employee Earl Porter. Employee's check No. 400,554
2. Address: Street and No. General Delivery, City or town Madisonville, Texas
3. Sex Male. Age 46. Married, single, widowed Married
4. Do you speak English? Yes. Nationality American

INJURED PERSON

5. State regular occupation Longshoreman
6. What were you doing when injured? Loading a ship
7. (*a*) Wages or average earnings per day, $24.00 (Include overtime, board, rent, and other allowances.) (*b*) Per week, $125.00 (*c*) Were you employed elsewhere during week in which you were injured? No (*d*) If so, state where and when
8. Were you paid full wages for day of accident? Yes

9. Employer Southern Stevedoring Contracting Company Company

EMPLOYER

10. Office address: Street and No. Cotton Exchange Bldg. City or town Galveston, Texas
11. Nature of business Loading and unloading vessels

12. Place where injury occurred Texas City, Texas —S/S Southern States
13. Name of foreman Ernest Wisby
14. Date of accident or first illness, the 19 day of Dec., 1949, at 4:45 o'clock P. M.

THE INJURY

15. How did accident happen, or how was occupational disease caused? A budget was hoisted to the top of the hold and then fell back striking a beam which fell and struck me across the back and left arm

16. State fully nature of injury or occupational disease: Muscles, ligaments, bony structure, cartilage and nerves of back and left arm broken, crushed, strained and compressed, causing total permanent disability.
17. On what date did you stop work because of injury? December 19, 1949
18. Have you returned to work? (Yes or No) No If "yes," on what date? ....., 194..
19. Does injury keep you from work? (Yes or No) Yes

NATURE AND EXTENT OF INJURY

20. Have you done any work in period of disability? No
21. Have you received any wages since injury? No If so, from and to what date? .....
.....
22. Has injury resulted in amputation? No If so, describe same .....
.....
23. Did you request your employer to provide medical attendance? Yes Has he done so? No
24. Attending physician: Name Dr. Emil Carroll Address Madisonville, Texas
25. Hospital: Name .....
Address .....

26. Have you given your employer notice of injury? (Yes or No) Yes When? Dec. 12, 1949

NOTICE 27. If such notice was given, to whom? The foreman Ernest Wisby

28. Was it given orally or in writing? Orally and in writing

I hereby present my claim to the Deputy Commissioner for compensation for disability resulting from an injury arising out of and in the course of my employment and not occasioned solely by intoxication, or by my willful intention, and in support of it I make the foregoing statement of facts.

Signed by Earl Porter, Claimant.

Mail address General Delivery, Madisonville, Texas.

Dated ....., 194..

U. S. Department of Labor, Bureau of Employees' Compensation
Office of Deputy Commissioner 502 Post Office Bldg., Galveston, Tex.
Administering Longshoremen's and Harbor Workers' Compensation Act

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NOTICE TO EMPLOYER AND INSURANCE CARRIER THAT CLAIM HAS BEEN FILED

Gentlemen:

There is enclosed copy of a claim for compensation which has been filed by Earl Porter, c/o Geo. Porter, General Delivery, Madisonville, Tex., Inj.: 12/9/49. You should pro-

ceed to pay compensation promptly when due as provided by Section 14 of the Longshoremen's and Harbor Workers' Compensation Act and to furnish medical treatment in accordance with Section 7(c) thereof, unless liability to pay compensation is controverted.

Section 14(d) provides that if the employer controverts the right to compensation he shall file with the deputy commissioner, on or before the fourteenth day after he has knowledge of the alleged injury or death, a notice stating that the right to compensation is controverted, the name of the claimant, the name of the employer, the date of the alleged injury or death, and the grounds upon which the right to compensation is controverted.

Under the Commission's regulations where claim is filed the employer or insurance carrier, within 10 days from the date notice is received that claim has been filed, is required to file answer thereto.

Forms of notice of controversy and answer are enclosed for use in the event the right to compensation is controverted and the claim is to be opposed.

The original notice and answer should be filed with the deputy commissioner at the above address and copy thereof served upon the claimant either personally or by mailing it to the address given in the claim if you deny liability, otherwise you should proceed to pay compensation immediately as provided by the said Act and not require the claim-

ant, as well as yourself, needlessly to incur the expenses incidental to a hearing before the deputy commissioner.

Dated at Galveston, Texas, Aug. 24, 1950.
Mailed to:

Texas Employers' Insurance Assn.
2502 Fannin St.
Houston 2, Texas
Attn.: Mr. R. Schwartz

Southern Stev. & Contr. Co.
526 Cotton Exchange Bldg.
Houston 2, Texas

Very truly yours,

HUGH A. VORIS, Deputy Commissioner.

UNITED STATES EMPLOYEES' COMPENSATION COMMISSION

Office of Deputy Commissioner Galveston, Texas
Administering Longshoremen's and Harbor Workers' Compensation Act

ANSWER OF EMPLOYER OR INSURANCE CARRIER TO EMPLOYEE'S CLAIM FOR COMPENSATION

Earl Porter, Claimant

vs.

Southern Stevedoring & Contr., Employer
Texas Employers Ins. Assn., Insurance Carrier

The employer or insurance carrier above named for answer to the claim respectfully shows:

1. It is denied that applicant sustained an injury on or about the date set forth in the application.

2. It is denied that both the employer and employee were subject to the Longshoremen's and Harbor Workers' Compensation Act at the time of the alleged injury.

3. It is denied that the relationship of employer and employee existed at the time of the injury.

4. It is denied that at the time of the alleged injury the employee was performing service growing out of and incidental to his employment.

5. It is denied that notice of injury was given employer as specified in application.

6. It is denied that applicant was permanently disabled to the extent stated in application.

7. It is denied that applicant was temporarily disabled for the period stated in application.

8. It is denied that the rate of wages as set forth in application is correct.

9. .....

Signed Reuben Schwartz

Note.—The employer or insurance carrier should answer the claim within ten days from the date that a copy of it is served upon him. The original answer should be mailed to the deputy commissioner at the above address and a copy thereof served upon the claimant either personally or by mailing to the address in the claim.

UNITED STATES OF AMERICA
U. S. Department of Labor, Bureau of Employees' Compensation

Case No. 61-1970

NOTICE OF HEARING

In the matter of the Claim for Compensation under the Longshoremen's and Harbor Workers' Compensation Act.

Earl Porter, Claimant.
against
Southern Stevedoring & Contracting Co., Employer.
Texas Employers' Insurance Association, Carrier.

(R) To Earl Porter
General Delivery
Madisonville, Texas

Mr. Douglas R. Zwiener,
Atty
c/o Burris, Benton & Baker
510 Union Natl. Bank Bldg
Houston, Texas

(R) To Southern Stev. & Contr. Co.
526 Cotton Exchange Bldg.
Houston 2, Texas

Act Reporting Service
261 Constitution Ave., N.W.
Washington, D. C.

(R) To Texas Employers' Ins. Assn.
2502 Fannin St.
Houston 2, Texas
Attn.: Mr. R. Schwartz

Mr. Vernon L. Polk
4001 Ave. S½
Galveston, Texas, Attn.:
Mrs. Ethel Eagleston

You are hereby notified that upon application made by Claimant, Earl Porter, an interested party in the above-entitled claim, a hearing on such claim is hereby ordered, to

be held before Hugh A. Voris, Deputy Commissioner Eighth Compensation District of U. S. Department of Labor, Bureau of Employees' Compensation, at Room 807, Federal Office Bldg., Franklin & Fannin Sts. in the City of Houston, Texas on the 19th day of September, 1950, at 1:30 o'clock p. m. of that day.

In testimony whereof, the undersigned, a Deputy Commissioner of the U. S. Department of Labor, Bureau of Employees' Compensation, has hereunto set his hand at Galveston, Texas this 7th day of September, 1950

HUGH A. VORIS, Deputy Commissioner.
Eighth Compensation District.

UNITED STATES OF AMERICA
U. S. Department of Labor, Bureau of Employees' Compensation

Case No. 61-1970

Notice of Hearing

In the matter of the Claim for Compensation under the Longshoremen's and Harbor Workers' Compensation Act.

EARL PORTER, claimant
against
SOUTHERN STEVEDORING & CONTRACTING COMPANY employer
TEXAS EMPLOYERS' INSURANCE ASSOCIATION carrier

(R) To Earl Porter
General Delivery
Madisonville, Texas

Royston & Rayzor, Attys. at Law
Cotton Exchange Bldg.
Houston, Texas
Attn.: Mr. E. D. Vickery

(R) To Southern Stev. & Contr. Co.
126 Cotton Exchange Bldg.
Houston 2, Texas

Ace Reporting Service
261 Constitution Ave., N.W.
Washington, D. C.

(R) To Texas Employers' Ins. Assn.
2502 Fannin St.
Houston 2, Texas
Attn.: Mr. R. Schwartz

Mr. Vernon L. Polk
4001 Ave. S½
Galveston, Tex., Attn.: Mrs. Ethel Eagleston.

*See below.
*Copy to
Texas Employers Ins. Assn.
2315 Ave. J
Galveston, Tex.

You are hereby notified that upon application made by Claimant, Earl Porter, an interested party in the above entitled claim, a further hearing on such claim is hereby ordered, to be held before Hugh A. Voris, Deputy Commissioner Eighth Compensation District of the U. S. Department of Labor, Bureau of Employees' Compensation, at Room 208, U. S. Post Office Bldg. in the City of Texas City, Texas on the 10th day of November, 1950, at 9:30 o'clock a. m. of that day.

In testimony whereof, the undersigned, a Deputy Commissioner of the U. S. Department of Labor, Bureau of Employees' Compensation, has hereunto set his hand at Galveston, Texas this 31st day of October, 1950

HUGH A. VORIS, Deputy Commissioner.
Eighth Compensation District.

FEDERAL SECURITY AGENCY

Public Health Service

In replying, address the
Medical Officer in Charge
U. S. Marine Hospital
Galveston, Texas

November 14, 1950

Mr. Hugh A. Voris
502 Post Office Building
Galveston, Texas

Re: Earl Porter
Case No. 61-1970

Dear Mr. Voris:

The above named person was seen as an out-patient on November 9, 1950, presenting Form U. S. 214 as authority for the examination.

Patient gives a history of injury on December 9, 1949, while employed as longshoreman by Southern Stevedore & Contracting Company. On that date a falling piece of lumber struck patient on left shoulder, and while patient attempted to withdraw he fell, striking various parts of his body. Since injury patient has not been able to do any type of work. He states that his left shoulder pains constantly, and he is unable to elevate his left arm. He also complains of pain in lower back which is enhanced on prolonged sitting.

Findings: Left upper extremity—as compared to right—there is no difference in measurement. The left arm cannot be elevated more than 40 degrees without causing pain. There is no limitation of motion in extension and flexion of arm. Movement about elbow joint is good. Movement about wrist joint and function of fingers appear normal. Right upper extremity—The right arm can be raised to about 80 degrees without causing any pain. There is no limitation of motion of elbow, wrist or fingers. Examination

of back—There is alleged tenderness in L-3—L-4—L-5 area. There is some limitation of motion on extension and flexion of back. No sensory changes noted.

X-rays were reported as follows: "Both shoulders; There is no evidence of abnormality. Thoracic and upper lumbar spine: There is extensive hypertrophic spur formation of the lateral borders of the bodies of D-4, 5, 6, 7, and 8 with bony bridging laterally. No narrowing of any of the intervertebral spaces is seen. No other unusual findings are noted".

Recommendation: Physical and x-ray findings show definite changes in the lumbar and thoracic spines. This can explain patient's symptoms referable to the back. There is definite limitation of motion about left shoulder joint and some limitation of motion about right shoulder joint. The osteoarthritic changes are probably not the result of injury but they may have been aggravated by injury. The changes in left shoulder are probably the result of injury. The changes in the back are most probably permanent, and most likely will get progressively worse. The changes noted in the left shoulder should not be a permanent change in view of no bony changes. However, in view of the progress to date, prognosis should be guarded. Patient was advised that he should use his left upper extremity more frequently and do active daily exercise.

Yours sincerely,
HAROLD D. LYMAN
Harold D. Lyman
Medical Director, PHS
Medical Officer in Charge

(A copy of this report was mailed to
claimant and insurance carrier 11/20/50. A.C.)

CSM/nod

U. S. Department of Labor
BUREAU OF EMPLOYEES' COMPENSATION
Eighth Compensation District

COMPENSATION ORDER
AWARD OF COMPENSATION
Case No. 61-1970

In the matter of the claim for compensation under the Longshoremen's and Harbor Workers' Compensation Act.

EARL PORTER, claimant
vs.
SOUTHERN STEVEDORING & CONTRACTING COMPANY employer
TEXAS EMPLOYERS' INSURANCE ASSOCIATION
Insurance Carrier

Such investigation in respect to the above entitled claim having been made as is considered necessary, and hearings having been duly held in conformity with law, the Deputy Commissioner makes the following:

FINDINGS OF FACT.

That on the 19th day of December 1949, the claimant above named was in the employ of the employer above named at Texas City, in the State of Texas, in the Eighth Compensation District, established under the provisions of the Longshoremen's and Harbor Workers' Compensation Act, and that the liability of the employer for compensation under said Act was insured by Texas Employers' Insurance Association; that on said day, claimant herein, while performing service for the employer as a longshoreman on the SS SOUTHERN STATES then upon navigable waters of the United States, sustained personal injury resulting

from falling onto dunnage (scrap lumber and other material) in the hold of the ship; that at said time, claimant, with a number of other longshoremen, was making a frantic effort to escape from the hold of the ship on account of a flash fire due to burning of sulphur that had become ignited in some way after certain pieces of cargo had fallen and broken an electric-light wire; that as a result of said fall, claimant sustained severe contusion and strain of his left shoulder and upper back and other parts of his body; that said injuries have resulted in a condition described as peri-arthritis of the left shoulder, causing limitation of motion in the joint, and in other disability; that notice of said injury was given immediately to the foreman directly in charge of the gang in which claimant worked, but that, for unexplained reasons, a report of injury was not furnished the Bureau of Employees' Compensation, and that the record is conflicting as to whether or not the matter was reported to the timekeeper, who was responsible for securing medical treatment; that it is hereby found that the requirements of the Longshoremen's and Harbor Workers' Compensation Act as to notice of injury was complied with by claimant; that the claimant requested the foreman to send him to a doctor, but this was not done and the employer has not furnished the employee with medical treatment as required by Section 7 (a) of said Act; that the employer and insurance carrier are liable for reasonable charges for such treatment received to date; that claimant is entitled to such further medical treatment as is needed for recovery from the effects of the injury at the expense of the employer and carrier; that evidence could not be secured as to exact amount of claimant's earnings for the year prior to his injury, but it is hereby found, from his own statements and such further evidence as could be secured, that his average weekly wage for the year prior to injury amounted to the

sum of $18.00; that as a result of the injury sustained, claimant was wholly disabled from December 19, 1949 to the present time and that such disability continues, and he is entitled to 46-1/7 weeks compensation, to and including the date of last hearing held on November 10, 1950 at $12.00 per week, amounting to $560.57, no part of which has been paid;

Upon the foregoing facts, the Deputy Commissioner makes the following:

AWARD.

That the employer, Southern Stevedoring & Contracting Company, and the insurance carrier, Texas Employers' Insurance Association, shall pay to the claimant compensation as follows: The sum of $560.57 as of November 10, 1950, and the further sum of $12.00 per week, payable each two weeks, beginning with November 11, 1950 until the further Order of the Deputy Commissioner; that said employer and insurance carrier shall furnish claimant with such medical treatment as may be needed for recovery from the effects of his injury.

Given under my hand at Galveston, Texas, this 29th day of November 1950.

HUGH A. VORIS
Deputy Commissioner
Eighth Compensation District.

PROOF OF SERVICE.

I hereby certify that a copy of the foregoing Compensation Order—Award of Compensation—was sent by registered mail to the claimant, to the employer, and to the insurance carrier at the last known address of each as follows:

Earl Porter, Box 675, Madisonville, Texas

Southern Stev. & Contr. Co., Cotton Exchange Bldg.
Houston 2, Texas

Texas Employers' Insurance Assn.
Attn.: Mr. Smith Pettigrew, 2315 Ave. J, Galveston, Texas

By regular mail to:

Royston & Rayzor, Attys. at Law
Attn.: Mr. E. D. Vickery, Cotton Exchange Bldg.
Houston 2, Texas

Texas Employers' Insurance Assn.
Attn.: Mr. R. Schwartz, 2502 Fannin St., Houston 2, Texas
Bureau of Employees' Compensation U. S. Department of Labor Washington 25, D. C.

HUGH A. VORIS
Deputy Commissioner

Mailed: November 29th, 1950
ac

U. S. Department of Labor
BUREAU OF EMPLOYEES' COMPENSATION
Eighth Compensation District

COMPENSATION ORDER
ORDER AMENDING AND SUPPLEMENTING ORDER OF AWARD OF COMPENSATION

Case No. 61-1970

In the matter of the claim for compensation under the Longshoremen's and Harbor Workers' Compensation Act.

EARL PORTER, claimant
vs.
SOUTHERN STEVEDORING & CONTRACTING COMPANY employer
TEXAS EMPLOYERS' INSURANCE ASSOCIATION
Insurance Carrier

Compensation Order having been entered herein under date of November 29, 1950 awarding compensation for total disability to the above named claimant on account of an injury incurred by him December 19, 1949 while employed by the employer above named, and appeal having been taken from said Order to the U. S. District Court for the Southern District of Texas, Houston Division, and the Court having found said Order incomplete and inconclusive on the question of notice of injury to the employer and having remanded the matter to the Deputy Commissioner for further hearing, if necessary, and findings to complete said record, and it appearing that all available information has been secured and that no further hearing is necessary, said Order of November 29, 1950 is hereby supplemented and amended as to the question of notice of injury as follows:—

That written notice of injury was not given within thirty days as provided by Section 12 (b) of the Longshoremen's and Harbor Workers' Compensation Act, but that the agent of the employer in charge of the business in the place where the injury occurred had knowledge of the injury and that the employer has not been prejudiced by failure to give written notice; that failure of the employee to give notice in writing as provided by Section 12 (b) is hereby excused for the following reasons:—that claimant reported the injury verbally to the employer's foreman in charge of the gang in which claimant was working at the time of injury, immediately following the injury; that said notice was repeated the next day; that claimant is an illiterate man, testifying that he is unable to read and only writes his name with difficulty; that he was not a regular longshoreman and had only worked as a longshoreman one night prior to the date of his injury, and was not acquainted with the requirements as to reporting an injury; that he was not given any instructions as to whom he should report an injury; that his immediate foreman was the only representative of the employer known to him, and that said foreman testified that he had reported the injury to a timekeeper of the employer; that it is shown by the testimony of several fellow-workers that claimant was complaining of injury at the time said injury occurred and that his injury was generally known to these fellow-employees following a hurried exit from the ship due to a flash fire; that the timekeeper has testified that he immediately visited the scene of the accident, and could easily have inquired as to injuries among the gang of longshoremen but disclaims knowledge of this injury at the time; that claimant's verbal report of injury to his immediate foreman constitutes the usual method of reporting such injuries, and that it is clearly due to the negligence of agents of the employer that said injury was not reported

and claimant furnished with medical treatment at the time the injury occurred.

Given under my hand at Galveston, Texas, this 14th day of March 1951.

HUGH A. VORIS
Deputy Commissioner
Eighth Compensation District.

PROOF OF SERVICE.

I hereby certify that a copy of the foregoing Compensation Order—Order Amending and Supplementing Order of Award of Compensation—was sent by registered mail to the claimant, to the employer, and to the insurance carrier at the last known address of each as follows:

Earl Porter, Box 675, Madisonville, Texas

Southern Stev. & Contr. Co., Cotton Exchange Bldg. Houston 2, Texas

Texas Employers' Insurance Assn.
Attn.: Mr. Smith Pettigrew, 2315 Ave. J, Galveston, Texas

By regular mail to:

Royston & Rayzor, Attys. at Law

Attn.: Mr. E. D. Vickery, Cotton Exchange Bldg. Houston 2, Texas

Texas Employers' Insurance Assn.
Attn.: Mr. R. Schwartz, 2502 Fannin St., Houston 2, Texas

Mr. Ward E. Boote, Asst. Solicitor Employees' Compensation Division
U. S. Department of Labor, Washington 25, D. C.

HUGH A. VORIS
Deputy Commissioner

Mailed: March 14th, 1951.
ac

U. S. Department of Labor

BUREAU OF EMPLOYEES' COMPENSATION

CERTIFICATE

This is to certify that the attached proceedings before the Deputy Commissioner of the Eighth Compensation District of the U. S. Department of Labor, Bureau of Employees' Compensation, in the matter of:

NAME OF PROCEEDING: EARL PORTER

Case No. 61-1970

Place: Houston, Texas

Date: September 19, 1950

were held as therein appears and that this is the original transcript thereof for the files of the U. S. Department of Labor.

ACE REPORTING CO.
Official Reporter

By ETHEL EAGLESTON
Ethel Eagleston

U. S. Department of Labor

BUREAU OF EMPLOYEES' COMPENSATION

In the matter of the claim for compensation under the Longshoremen's and Harbor Workers' Compensation Act.

Case No. 61-1970

EARL PORTER, claimant

vs.

SOUTHERN STEVEDORING & CONTRACTING COMPANY employer

TEXAS EMPLOYERS' INSURANCE ASSOCIATION Insurance carrier

807 Federal Office Building
Houston, Texas
Tuesday, 19 September 1950

Met, pursuant to notice, at 1:30 p.m.

BEFORE:

HUGH A. VORIS, deputy commissioner of the Eighth Compensation District.

APPEARANCES:

FOR THE CLAIMANT:
Claimant present in person.

FOR THE INSURANCE CARRIER:
E. D. VICKERY (Royston & Rayor, Attorneys-at-Law) 625 Cotton Exchange Building, Houston, Texas; and REUBEN SCHWARTZ, Claims Adjuster for Texas Employers' Insurance Association.

4 PROCEEDINGS

The Deputy Commissioner: This is a hearing on claim under the Longshoremen's and Harbor Workers' Compensation Act, filed by Earl Porter, now living at Madisonville, Texas, and alleging injuries incurred by him December 9, 1949, while employed as a longshoreman by Southern Stevedoring & Contracting Company at Texas City, Texas.

The matter came up through a letter written to me by Attorney Douglas R. Zweiner, of Houston, Texas, on June 15, 1950. No record of the injury was found in our office and considerable correspondence has followed.

The Employer has now submitted report on our form US-202 but states that it has no record of claimant being employed by them at the time indicated.

At my suggestion, claimant made out the form report on our form US-201, designated "Employee's First Notice to the Deputy Commissioner and to the Employer of Injury."

The correspondence indicates that there was some question of a third party suit being instituted by Attorney Zweiner, but it appears under date of August 24, 1950, a formal claim was filed with the office of the Deputy Commissioner of the Eighth Compensation District, alleging the injury above referred to on December 19, 1949.

On August 25, 1950, I inquired of the parties as to whether a formal hearing was desired and as to where it might be held. The matter was set for hearing at Houston at this time as claimant expressed his desire to proceed with his claim.

The file further shows that the Insurance Carrier has answered the claim by a general denial of all matters of issue.

Mr. Vickery, you haven's any further information as to the employment or this injury either?

Mr. Vickery: No, we don't. We are certain, of course, that he was not employed by the Employer in this cause on December 9, 1949. As to the other date, there has been some confusion in the records with reference to December 19, and I am unable to state definitely whether or not the man was employed on that particular date. We hope by subsequent investigation to be able to say whether or not he was in the employ of this particular stevedoring company on that date, but at the present time I can't say definitely one way or the other. I just don't know.

In order that the record might be clear, in addition to the general denial and formal answer which we have filed, the Insurance Carrier specifically denies that any notice within the statutory time was given either to the Deputy Commissioner or to the Employer of the injury which was received; denies that either the Employer or the Agent in charge of the business at the place where the injury occurred had knowledge of the injury; and specifically denies that there is any satisfactory reason why such notice could not have been given; and would like to specifically deny that any request was made for medical treatment either of the Employer or the Insurance Carrier.

The Deputy Commissioner: Earl, you are claiming you were injured December 19. Is that the date, December 19, 1949?

The Claimant: Yes, sir, that morning at 4:15, on a Monday morning.

The Deputy Commissioner: Well, I guess there are no facts to state that are actually agreed on as I understand it.

Mr. Vickery: I don't know of any.

The Deputy Commissioner: You are willing to proceed here without your lawyer? I can advise you, try to bring out the facts as best I can.

The Claimant: Yes, sir.

The Deputy Commissioner: You are willing to go ahead without your attorney?

The Claimant: Yes, sir.

Thereupon

6 EARL PORTER

the claimant herein, was called as a witness for and in his own behalf, and being then and there duly sworn by the Deputy Commissioner, assumed the witness stand, and, upon examination, testified as follows:

6 EXAMINATION BY THE DEPUTY COMMISSIONER

By the Deputy Commissioner:

Q. State your name for the record here.

A. Earl Porter.

Q. What is your present address?

A. Madisonville, Texas. Is that what you mean?

Q. That's right. Do you have any street number?

A. General Delivery is all.

Q. You are the same person who is making claim on account of an injury you say occurred December 19, 1949, while employed at Texas City, Texas, as a longshoreman by Southern Stevedoring & Contracting Company?

A. Yes, sir.

Q. You are sure about the name, Southern Stevedoring & Contracting Company, being the Employer?

A. Well, what do you mean?

Q. Are you sure of the name of your employer at the time?

A. At the time I got hurt?

Q. Yes.

A. Yes, sir.

Q. Southern Stevedoring & Contracting Company?

A. Yes, sir.

Q. Did this injury occur on board a ship?

A. Just a minute, sir—I have something here—

(The witness handed a document to the Deputy Commissioner.)

Q. The injury you are talking about, did it occur on board a ship?

A. Yes, sir.

Q. Do you know the name of the ship?

A. No, sir, I don't.

Q. You have a piece of an envelope here with a name "S.S. Southern States" on it. What does that mean?

A. Well, sir, when I—I only worked two nights there, a Friday night and Sunday night.

Q. Friday night and Sunday night?

A. Yes, sir, I started Sunday at 7:00 o'clock and the accident happened at 4:15 that morning.

Q. Monday morning at 4:15?

A. Yes, sir.

Q. How do you place the date here as being December 19, do you know how that is placed?

A. I don't know, sir, what you are talking about.

Q. The whole fact of the injury has been questioned. I want to get as much detail from you as I possibly can as to the day it happened. How did you determine, six months

later, that the injury actually occurred December 19, 1949?

A. Yes, sir, that was when it was done, 1949.

Q. December 19?

A. Yes, sir, the 19th.

Q. And what day of the week, you think it was Monday morning?

A. Yes, sir, Monday morning.

Q. Well, the calendar shows that December 19 was a Monday. Well now, what happened to you at the time of this injury, what kind of injury did you have?

A. Well, we were working, unloading this budget—

Q. Unloading what?

A. This budget—you make tin out of it.

Q. Is that ore from South America?

A. Yes, sir, that is what it is.

Q. All right.

A. And a fellow who had this we loaded it on, and he carried it up so far and it hit a side board and swung down and the lights exploded, and I was standing on the far side; I broke and run and it hit a standard and fell on me and knocked this shoulder out of place and injured my back.

Q. It hit what?

A. It hit a standard—it hit me and I fell and injured my back and knocked this shoulder out of place, so I got to the top—

Q. Your left shoulder?

A. Yes, and I was falling back—there was only one way out. A colored boy behind me pushed me out, and I broke a rung and fell, and two white men there told him to take me to the doctor, and he said all right, but he didn't. His name was Ernest Wisby.

Q. He was your foreman?

A. Yes, sir, he was the man that hired me.

Q. And you understood you were working for the Southern Stevedoring & Contracting Company at the time?

A. Well, sir, to tell the truth, I didn't know at the time they hired me; they just told me to come to work.

Q. This envelope, is that the Company that paid you at the time you got hurt?

A. Yes.

Q. The Southern Stevedoring & Contracting Company?

A. Yes, sir.

Q. And this was your pay envelope?

A. Yes, sir, that is what they paid me.

Q. For that job?

A. Yes, sir.

Q. And you did tell your foreman about it?

A. Yes, sir, I sure did, and I have witnesses I told him.

Q. Were you seriously enough hurt to have to quit work right away?

A. I never hit a lick of work since the 19th?

Q. 9th or 19th?

A. The 19th.

Q. Where does Wisby live, in Texas City?

A. Yes, sir. His name is Ernest Wisby.

Q. All right, what happened to you afterwards? Did Wisby send you to a doctor?

A. He said he was but he took me to my house and put me out, and I crawled to my house on my knees.

Q. Where were you living?

A. Texas City.

Q. Texas City?

A. Yes, sir.

Q. What happened after that, could you get to a doctor yourself, later?

A. Yes, sir, after he didn't come carry me to the doctor. I was depending on him, what he said; after he didn't, I

went to see Doctor Quitwell in Texas City.

Q. Quitwell?

A. I think it is Quitwell, in Texas City, it was the first time I ever saw him.

Q. You did see him?

A. Yes, sir.

Q. How soon after the injury before you saw the doctor?

A. I waited for P.D.—that's what they called him—for quite a while and I saw he wasn't going to do any good. I didn't have any money and I thought I would see him and see if he could do me any good.

Q. Was that the same day you got hurt that you went to the doctor?

A. No, sir, I was depending on P.D.; he told me he would carry me to a doctor.

Q. How long before you saw a doctor?

A. About a week.

Q. And what was the matter with you at the time?

A. My back was injured and I got a lick on this shoulder, and I didn't know it was out of place until I saw the doctor, Doctor Carroll, he said it was out and put it back.

Q. The shoulder?

A. Yes, sir, the shoulder.

Mr. Vickery: Let the record show I object to any testimony he has given with reference to "what the doctor told me." It is hearsay, therefore the objection.

The Deputy Commissioner: Overruled. I would like to get a consecutive and complete story of what happened here as far as I can.

By the Deputy Commissioner:

Q. What building or what street does Doctor—what's his name?

A. Doctor Quitwell—it is a hard name for me to call.

Q. Where does he live in Texas City, can you tell us?

A. No, sir, I can tell you where his office is.

Q. All right, tell us that.

A. It is by the First National Bank, on the left hand side going up-town.

Q. By the First National Bank?

A. Yes, sir, on the other side.

Q. In Texas City?

A. Yes, sir.

Q. And how long were you under this doctor's care?

A. I have been under him ever since I have been in Madisonville.

Q. You mean you come back to Texas City to see him?

A. No, sir. Doctor Carroll is in Madisonville.

Q. You are talking about Doctor Quitwell.

A. Well, he wrote me a prescription sent to go to the hospital, but I didn't have any money to go nowhere, didn't have a nickel to catch a bus to go, didn't have any friends, in Texas City, so after quite a while my brother from Huntsville came and got me.

Q. And took you to Madisonville?

A. He took me to Huntsville.

Q. How many times did you see the doctor at Texas City?

A Once.

Q. Once?

A. Yes, sir.

Q. Then you were taken to Huntsville?

A. Yes, sir, my brother come and got me.

Q. Were you under the care of a doctor at Huntsville?

A. Yes, sir, I went to him.

Q. Who is that?

A. Doctor Beasley.

Q. Doctor Beasley?

A. Yes, sir, Doctor Beasley.

Q. How long were you under his care?

A. Well, I stayed under his care about two weeks; he doctored on me while I stayed with my brother there. I had two brothers, so I had to go to both of them. They done what they could for me.

Q. The other brother you are talking about at Madisonville?

A. I went to the one at Huntsville first and then went to the one at Madisonville.

Q. And you have been under the care of a doctor at Madisonville?

A. Yes, sir.

Q. What is his name?

A. Doctor Carroll.

Q. Doctor Carroll?

A. Yes, sir.

Q. Did you ever see Ernest Wisby any more after the time of this accident?

A. Yes, sir, I did.

Q. When did you see him again?

A. It was two or three days after that.

Q. You saw him at Texas City?

A. Yes, sir.

Q. Did you remind him of your injury?

A. Yes, sir, I sure did.

Q. And what did he say or do about it?

A. He didn't say anything. He said, "I thought you were going to the doctor." I said, "No, you promised to carry me to the doctor. I didn't have anything; you said you would take care of it." Two white men there told him

surely to carry me to the doctor that morning, but he did not.

Q. Did you ask him for a ride or permission to go to a doctor when you saw him the last time?

A. No, sir, I asked him what was he going to do about it, so he didn't say anything at all.

Q. Where was he when you were talking to him?

A. In his place of business.

Q. What kind of business has he got?

A. He runs an ice cream parlor.

Q. Where were you from the first of the year up until June 13, 1950, when Attorney Zweiner wrote to me about this injury?

A. Where was I at?

Q. Where were you?

A. What is that, what month?

Q. Where were you for about five months' time there, from January to June of this year?

A. Five months from January—

Q. Were you at Madisonville all this time?

A. No, sir, I was at Huntsville at that time, about five months from now.

Q. And you haven't done any work at all?

A. No, sir, I haven't done a lick of work since December 19th.

Q. How did the matter happen to come to Mr. Zweiner's attention, the Attorney's attention?

A. A friend of mine there in Texas City, a friend told me about him and I wrote him directly after that. He come over there and after that I come up to see him.

Q. Did you talk to him about this injury?

A. Yes, sir.

Q. And you haven't done any work for wages since you got hurt, December 19, is that right?

A. No, sir, I sure haven't. I haven't been able. I can't use this arm and can't close these fingers.

Q. You are referring to your left arm?

A. What is that?

Q. You can't lift your arm?

A. No, sir, I can't get it any higher than that.

Q. Out straight from you, and up?

A. That is as far as I can get it.

The Deputy Commissioner: Indicating he cannot lift his arm more than twenty-five or thirty degrees from hips.

By the Deputy Commissioner:

Q. How about your right arm, do you have trouble using it?

A. Yes, sir, it hurts the back of the neck, all back there.

Q. You claim the trouble with your right arm is from this injury also?

A. I don't know, sir, that kick, when it knocked it out of place and they put it back, it caused a misery to settle there too.

Q. Where were you hit, or were you hit or just knocked down?

A. Yes, sir.

Q. You were knocked down?

A. Yes, sir.

Q. And do you know what part of your body struck anything?

A. When I fell, I went on my face, and when that fish hit me on the back and something hit me on the shoulder, but it didn't hurt on the shoulder as much as the back.

Q. What part of the back?

A. The small part of the back.

Q. The lower part?

A. Below my belt.

Q. Did you know what hit you?

A. A standard is the only thing I know that hit me.

Q. What is that, a piece of timber?

A. Yes, sir.

Q. How heavy?

A. We had some big pieces in there. I couldn't tell you how heavy it was.

Q. This is down in the hold of the ship, was it?

A. Yes, sir.

Q. You don't happen to have any written statement from the doctor at Madisonville or Huntsville either?

A. No, sir.

Q. Do you know if Mr. Zweiner has ever secured a statement from the doctors, any of them?

A. No, sir, I really don't.

Q. He is your attorney, isn't he?

A. Yes, sir, if he has, he hasn't told me.

The Deputy Commissioner: I might state for the record here that Attorney Zweiner has written in claimant's behalf a time or two but has stated that, "We are not acting as attorneys for Earl in this case for compensation. But are forwarding the papers as a convenience to him."

The Witness: May I say something?

The Deputy Commissioner: Go ahead.

The Witness: He told me he couldn't represent me on a longshoreman case, but he could represent me on a suit against a ship; he couldn't represent me on a longshoreman.

The Deputy Commissioner: Do you want to ask some questions, Mr. Vickery?

Mr. Vickery: Yes, I have a few.

19 CROSS EXAMINATION

By Mr. Vickery:

Q. Earl—
A. Yes, sir.
Q. Now, this night when you claim you got injured, you were working in a hold of a vessel?
A. Yes, sir, I believe.
Q. Where were you working, in the lower hold or tween deck or where?
A. I was working in the lower hold, the bottom hold.
Q. What type of cargo was in there?
A. Cargo?
Q. What type of cargo were you unloading?
A. You mean what I was unloading? --
Q. Yes.
A. Well, they called it budget, but I was unloading budget—

The Deputy Commissioner: What is that? We ought to get that correctly.

Mr. Schwartz: I think that is bullion. I think he is talking about bullion, tin bullion.

The Witness: That's right, that's what it is.

By Mr. Vickery:

Q. What is it, tin?

A. Yes, sir.

Q. Tin bullion?

A. Yes, sir.

Q. In what pieces does it come in?

A. It weighs a hundred and ten.

Q. Does it come in a square or is it big?

A. It is long, and about that thick.

Q. Indicating about a foot thick?

A. Yes, sir.

Q. About how long?

A. About that long, some of it, and some of it about that long.

The Deputy Commissioner: Indicating a foot and a half to two feet.

By Mr. Vickery:

Q. And did you unload these one at a time?

A. There were four of us working at that slide, two men on each side, unloading.

Q. What kind of slide did you have?

A. Like this, oh, they were made out of plain boards.

Q. Were you unloading?

A. No, we were loading on the ship.

Q. You were loading from the Tin Smelter onto the ship?

A. Yes, sir.

Q. And they were sliding this down the hold to you?

A. Yes, sir, and they carried it up, out.

Q. Was this slide a stationary piece of metal, or did it have a belt on it that ran around?

A. Yes, sir, it had a four corner rope on it up at the top, had a bulldog that he reached down and got it and

we hooked it on and the men running that run it up and took it up.

Q. Were you using a finger lift truck?

A. We were carrying it with our hands.

Mr. Vickery: What was that answer?

(Answer read.)

A. I mean, we were putting it on the side with our hands.

Q. Was the pig bullion, Earl, that you were handling, were you putting it on the ship to be carried off or were you taking it from the ship and landing it ashore?

A. We were taking it off the ship.

Q. Taking it from the ship to the shore.

A. You mean from the top of the deck?

Q. That's right.

A. Yes, sir.

Q. What were you using to get it from the lower hold to the top of the deck?

A. This boy had one of those long caterpillar, a long caterpillar and brought it over and let it slide down in the bottom of the ship, and we hooked on that and he would raise it and carry it back out.

Q. Was this a regular finger lift he had? Do you know what a finger lift is?

A. No, sir.

Q. A tractor that has two prongs that stick out at the bottom; they can either raise or lower. Was it one of those?

A. No, sir, it was—I just don't know what you call that; it was something like a caterpillar.

Q. Something like a tractor?

A. Yes, sir, but it had a long—I guess about thirty or forty feet—and it come around over this ship and he would let it slide down on there and we loaded with our hands, and he took it up on top.

Q. Was that a flat piece of deck?

A. Yes, sir, it was made like a slide.

Q. He lowered this slide, these flat boards, into the lower hold?

A. Yes, sir.

Q. And you put this tin bullion on that pallet, made like a pallet?

A. Yes, sir.

Q. It was made like a pallet?

A. Yes, sir.

Q. Then he hooked it up on the top side, is that right?

A. Yes, sir.

Q. How many pieces would you put on this slide, or pallet?

A. Forty.

Q. On each load?

A. Yes, sir.

Q. Now did you say one of these pieces of tin bullion slipped off the pallet?

A. Yes, sir, it got to the top and it swung that way and hit and before we fell back the light exploded and fell back down in the sulphur and I was running across on the far side and when I went along there it fell and hit that standard, and when I got alongside it, it struck me in the back.

Q. As he took the load of tin bullion out of the hatch, he hit the top of the hatch with it?

A. Yes, sir.

Q. The man operating this caterpillar, what you call it, was a longshoreman, he was in your gang?

A. Yes, sir.

Q. And he was also, if you were on that day an employee of Southern Stevedoring and Contracting Company, wasn't he, he was employed by the same people you were employed by, wasn't he?

A. Yes, sir.

Q. Now then, were you using the ship's winches—do you know what a ship winch is?

A. No, sir.

Q. Do you know these machines that have the cables and the wire ropes on them you use to take cargo out of ship ordinarily, do you know what I am talking about?

A. Yes, sir.

Q. That is a winch.

A. No, sir, but he had something like that.

Q. Was it something that your gang had brought on the ship to use for unloading?

A. Yes, sir, when I got out there, that was already out there.

Q. That was already out there?

A. Yes, sir.

Q. Is that the only thing that caused that tin bullion to fall, the fact he hit the side of the hatch with it?

A. Yes, sir, that is all I know.

Q. That is all you know?

A. Yes, sir.

Q. The rest of the load didn't fall down into the hatch after that the one piece that fell off?

A. Yes, sir, more than that, about half of it fell off.

Q. Were these individual pieces, or did the pallet fall?

A. You mean which it was on?

Q. Yes.

A. No, sir, it didn't fall.

Q. It didn't fall, it stayed up there?

A. Yes, sir.

Q. Now then, when it hit the side of the hatch up there, Earl, you say the lights exploded?

A. Yes, sir, something did, when it hit, the lights all lit up, a wire pulled loose and sulphur all around caught over me, and rolled on and you couldn't see nothing. At that time I was running, and that is when the stuff come back and hit the standard and hit me across the back.

Q. Did the light in that lower hold go out?

A. I don't know, because I was running. I don't know if they went out or not.

Q. Did you start running because you heard this hit the hatch up there and saw this falling?

A. Yes, sir, I was running to get out.

Q. What is this flash you are talking about, what is that?

A. You mean some heat, a flash, when this piece hit the side, it flashed and lit up and something fell down, and the sulphur caught fire and there was a bluish looking streak.

Q. When this tin bullion hit the hatch, there was a spark and it caught the sulphur on fire?

A. Yes, sir, something hit down there and made a big blaze where you couldn't see nothing, and at that time I was running.

Q. Where was the sulphur, in the lower hold?

A. It was scattered all over the deep, it wasn't in the section the explosion had been in it and they didn't get it all out and it was scattered.

Q. And it flashed up blue, is that right?

A. Yes, sir.

Q. Where were you running at the time, where were you running to?

A. I was trying to get to that hole to get out of it.

Q. Well, now, you didn't have any big blaze down there in that lower hold, a big fire of any kind?

A. No, I

Q. Just this one little flash?

A. It flashed all over, and you couldn't see anything.

Q. You couldn't see anything?

A. No, sir, after that the sulphur was strangling me; I was farther over than the rest of them, and I started running.

Q. Did you run out underneath the hatch opening, underneath the hatch opening?

A. Yes, sir, the hatch—the budget fell off of it.

Q. You know what I mean by the hatch opening, the hole down the center of the hatch where you loaded the cargo through?

A. Yes, sir, in the bottom of the ship.

Q. Did you try to run out to the center of that hatch opening?

A. No, sir, I went around; I went around to the right of it, and that is when that bullion hit that standard and hit my back, and I fell.

Q. Which way were you running at the time?

A. Where I was trying to get?

Q. Yes.

A. To the hole up the top.

Q. Were you trying to go out a ladder on the hatch opening?

A. There was a ladder.

Q. Between the two holes?

A. Yes, sir, that is on the side, you go up the top to go out.

Q. You don't go out the same opening you load the cargo; is that what you mean?

A. No, sir.

Q. This standard the tin bullion hit, Earl, what was it there for?

A. They have lots of it there to hold the bullion, I guess together, and we got one load of bullion and had a mile.

Q. In other words, the place that Mr. yon was just a piece of board, is that right?

A. Well, it was a standard we had in there, like a two by four, two by six, or something like that.

Q. Was it something you all at longshoremen had moved around in the hold in order to get to this bullion?

A. Yes, sir.

Q. And when this piece of bullion hit it, it fell and hit you across the back?

A. It fell from the back while the standard hit me on the back and I fell.

Q. And it also hit your shoulder?

A. Yes, sir, a piece hit my shoulder and knocked it out of place.

The Deputy Commissioner: Pointing to the left shoulder.

By Mr. Vickery:

Q. Now, Earl, how long have you been working as a longshoreman?

A. I only worked two nights. They hired me and I worked Friday night, and Saturday night it rained, so they put it off until Sunday night, so we went to work at 7:00 o'clock Sunday.

Q. So Friday night, before you were hurt on Sunday night, was the first time you ever worked as a longshoreman?

A. Yes, sir.

Q. How come you to go down to the waterfront to get work, Earl?

A. There wasn't anything in Texas City I could do and I had to try to make a living.

Q. What type of work did you do before you went to the docks as a longshoreman?

A. I used to work for Mason Brothers in them tanks.

Q. Mason Brothers?

A. Yes, sir.

Q. In Texas City?

A. Yes, sir.

Q. How long have you lived in Texas City?

A. About three years.

Q. Did you work all that time for Mason Brothers?

A. I worked clean until the job finished.

Q. How long did you work for them?

A. Oh, I worked for them about nineteen months.

Q. What was the nature of your duties there?

A. Do you mean what—

Q. What type of work did you do?

A. Cleaning black oil out of them tanks.

Q. Was this at one of those refineries down there?

A. Yes, sir.

Q. It wasn't Mason Brothers, they didn't have a refinery, did they?

A. No, sir, they had a contract.

Q. What refinery did you work or did you work at all the refineries?

A. No, sir, I didn't work but at those tanks we cleaned out; that was the ones I worked at.

Q. Do you know what oil companies owned the tanks?

A. No, sir, I don't.

Q. How much money did you make a week working for Mason Brothers?

A. $1.12½ an hour.

Q. $1.12½ an hour?

A. Yes, sir.

Q. Was that your straight time, forty hours a week is all you worked?

A. We worked six days.

Q. You worked six days?

A. Yes, sir.

Q. Now, where did you go in Texas City to get this job as a longshoreman?

A. They was holding a meeting down on the square there and said who wanted to work to come around there, so I went around there. He asked me if I wanted to work and I told him yes, sir.

Q. Where was this, this square you are talking about?

A. In Texas City.

Q. I understand that, but where in Texas City.

A. Right there at Bill Jones, they called it—I can't call the man's name—give me just a little time—Willie Green's.

Q. Willie Green's?

A. Yes, sir.

Q. Now, then, this night that you say you were hurt, what day did you say that was?

A. On the 19th of December.

Q. On the 19th of December?

A. Yes, sir, the 19th of December, that is what they said.

Q. "They said"—who said that, is that what Mr. Zweiner told you?

A. No, sir.

Q. Who told you it was on the 19th?

A. Who?

Q. Specifically who, what were the names?

A. The boys I was working with, it was the first time I ever seen them; they said it was on the 19th of December.

Q. Were they white men or colored men?

A. Colored men.

Q. Colored men?

A. Yes, sir.

Q. And when did they tell you it was December 19?

A. A couple of days after that.

Q. After you got hurt?

A. Yes, sir.

Q. As a matter of fact, the place you got that information from was the Longshoremen's Union Hall, wasn't it, weren't they the ones that told you the particular day you worked on this ship?

A. You mean the 19th?

Q. Yes.

A. It was the same boys that were working with me that told me.

Q. They got that information from the Union records?

A. I don't know.

Q. As a matter of fact, you don't actually remember what day you were hurt, do you, Earl?

A. On the 19th, they told me.

Q. That is what they told you, but of your own personal knowledge, you don't remember the day you got hurt, do you?

A. Well, sir, just as I know of, it is the 19th.

Q. All you know is what they told you?

A. Yes, sir, I know that; I looked at the calendar and that is all that told me it was on the 19th, that morning.

The Deputy Commissioner: Do you know what day of the week it was?

The Witness: No, sir, all I know is it was Monday morning.

The Deputy Commissioner: You know it was Monday morning?

The Witness: On the 19th, that Monday morning.

The Deputy Commissioner: Was it on a Monday morning you were injured?

The Witness: Yes, sir.

The Deputy Commissioner: On a Monday.

The Witness: Yes, sir, Monday morning.

The Deputy Commissioner: All right. Could you place the date with reference to Christmas, how long before Christmas would it have been?

The Witness: You mean how long had it been to Christmas Day since the 19th of December?

The Deputy Commissioner: Was it before or after Christmas?

The Witness: Before Christmas.

The Deputy Commissioner: About how long before?

The Witness: Well, they said it was on the 19th of December.

The Deputy Commissioner: On a Monday morning, wasn't it?

The Witness: Yes, sir.

The Deputy Commissioner: All right.

By Mr. Vickery:

Q. Do you remember it was before Christmas?

A. Yes, sir.

Q. And you remember that yourself?

A. Yes, sir.

Q. How do you know you weren't injured on December 9th, Earl?

A. On the 9th?

Q. Yes.

A. I don't know, sir, anything about that.

Q. When you first started talking to Mr. Voris and filling out written claims for compensation in connection with your injury, on two or three different occasions you stated the day you were injured to be December 9th, didn't you?

A. No, sir, I didn't; it was the 19th.

Q. Did you ever sign any statements or any claims which said December 9th, 1949, was the day of your alleged injury?

A. You mean did I sign any kind of paper or anything?

Q. That's right.

A. No, sir.

Q. Earl, you did fill out some forms, some written forms, and sent them to Mr. Voris, the Deputy Commissioner here, with reference to the injury you are supposed to have sustained?

A. You mean had some papers filled out?

Q. Yes.

A. Yes, sir.

Q. Did you fill those out?

A. No, sir, I can't write.

Q. Did Mr. Zverina fill them out?
A. No, sir.
Q. Who did?
A. A fellow in Hendersville.
Q. What is his name?
A. Hugh Manning.
Q. Hugh Manning—is he a friend of yours?
A. He is a friend, in a way. I haven't known him quite awhile.
Q. You don't either read or write?
A. No, sir, I can't write.
Q. Can you read?
A. No, sir.
Q. Can't read at all?
A. No, sir.
Q. You can read some, can't you, Earl?
A. What do you mean?
Q. If you saw December 19, 1949, you would know that is December 19, 1949?
A. Yes, sir, I can count the days, I can count.
Q. And you know the difference between December 9 and December 19?
A. Yes, sir.
Q. And you would recognize that if you saw it written down, wouldn't you?
A. Yes, sir.
Q. Of course you know your name, you recognize your name, you can write your name?
A. Yes, sir, I can scratch my name.
Q. You can read a few words, can't you?
A. Oh, abc's, like that, I know my abc's a little bit.
Q. Did this friend that filled this out for you, you gave him the information to put on this form, didn't you?
A. Yes, sir.

Q. And you told him—he would ask you the questions, ask you when you got hurt, and you told him the date, didn't you?

A. I told him the 19th. If he put the 9th, he put it wrong.

Q. Then after you gave him this information and he filled out this form for you, Earl, you read it over and signed it, didn't you?

A. No, sir, I can't read.

Q. I see. Did you look at it before you signed it?

A. Yes, sir, I looked, but I didn't know what was on it.

Q. Yes, you see there, can't you, Earl, can you read this right there, line 1?

A. Here?

Q. Right here—you recognize that figure 1?

A. Yes, sir, I know what the 1 is.

Q. Can you read that line?

A. No, sir, I can't read none of that.

Q. What is that?

A. That is a 3 there.

Q. What is that?

A. I don't know, sir.

Q. Does that mean December to you, D-E-C?

A. Yes, sir, I guess so, I guess that is December. I just don't know, sir. I didn't have a chance to go to school, only just count a little.

Q. That is your signature on the bottom of this claim?

A. Yes, sir, that is where I scratched it.

Q. And it was signed on July 1, 1930?

A. Yes, sir, that is 1930.

Q. July 1, 1930, isn't it?

A. I don't know, sir.

Q. You don't know what month it is?

A. No, sir, I can't read that.

Q. When did you first talk to Mr. Zweiner about your injury, Earl?

A. Well, sir, a fellow gave me, told me about him, so I wrote him and he come down and then after that I come back over here where he is at.

Q. Was that some time in June of this year?

A. I don't know, sir.

Q. You don't remember?

A. No, sir, I don't; I am sorry.

Q. Do you remember how many months ago it was from now?

A. From the time I got injured?

Q. No, from today.

A. No, sir, I don't.

The Deputy Commissioner: Are you talking about the time he first took it up with Zweiner?

Mr. Vickery: Yes.

The Deputy Commissioner: How many months ago was it when you first talked to Mr. Zweiner about this matter?

The Witness: You mean after I got injured?

The Deputy Commissioner: How many months ago was it you first talked to Attorney Zweiner about this, a couple of months ago, three, or four, or how many?

The Witness: I just don't know, sir; I am going to be honest; I just don't know.

The Deputy Commissioner: He first wrote me June 13. Was that somewhere around the first time you talked with him?

The Witness: I don't know; it could have been.

The Deputy Commissioner: June 15 was three months ago, about, was that about the time you talked with him?

The Witness: I don't know, sir; I really don't know sir; it could have been.

By Mr. Vickery:

Q. Did you tell Mr. Zweiner the day you got hurt, what the date was?

A. Yes, sir.

Q. What did you tell him?

A. On the 19th of December.

Q. And if he wrote the Deputy Commissioner you told him you were hurt on December 26, did he make a mistake too?

A. Yes, sir, he must have, because I remember I told him on the 19th of December. I will never forget it.

Q. It wasn't the day after Christmas you got hurt then?

A. Afterwards?

Q. Yes.

A. No, sir, it was before Christmas.

Q. Now then, after you got hurt, you saw Wisby two or three days after you got hurt, in Texas City?

A. That's right.

Q. And you said something to him about your injury at that time?

A. Yes, sir.

Q. Now, after you saw him two or three days after you got hurt, Earl, did you see him or anybody else that worked in that gang?

A. Working in the gang with me?

Q. That's right.

The Deputy Commissioner: Talk up a little bit more so the reporter can hear.

(By Mr. Vickery):

Q. And do you recall having Hugh Manning change your age on this form?

A. Yes, sir.

Q. Yes.

A. Yes, sir.

Q. Then you approved it, and were something else in addition to that, I am [illegible]?

A. Yes, sir, I told him I was forty-two.

Q. You told him you were forty-two?

A. Yes, sir.

Q. And then did you get Hugh Manning your average daily wages over?

A. Well, he discovered that, but he asked me what day was payday on here; I told him I didn't know, but according to my check it was $48.96, and I didn't work but two nights.

Q. I see. You then told Hugh Manning at the time you signed your form, the first you approved this or gave your employer notice of your injury, didn't you?

A. Approved this again, yeah, sir.

Q. When you had Hugh Manning fill this out, you told him what to write in here in ink, didn't you?

A. Yes, sir, he asked me the questions, and I told him, and I guess he put in there what I told him.

Q. And you knew at that time this form said the date of the accident was December 19, 1949?

A. Yes, sir, that is what he read to me and told me.

Q. And you told him you gave your employer notice of injury on December 12, 1949, isn't that right?

A. No, sir, December 19.

Q. And it also says December 12, 1949, your friend, Hugh Hassell, made another mistake, is that right?

A. He sure did.

Q. You couldn't give notice of your injury seven days before it happened, could you?

A. No sir, he made a bad mistake. I told him the 19th.

Q. So, if it says the 12th, you know the difference between the 12th and the 19th, don't you, Earl?

A. Yes, sir, I sure do.

Q. Is that a 12 on that slip?

A. Yes, sir.

Mr. Vickery: We want this made a part of the record. I presume your copy will be considered a part of the record?

The Deputy Commissioner: Yes, I have the original of that claim form and it is submitted as part of the record in cases appealed to the court.

Mr. Vickery: So there won't be any question about it, we would like at this time to offer Employee's Claim for Compensation filed out on Form US-203, which the claimant, Earl Porter, has acknowledged bears his signature, as well as the Employee's First Notice to the Deputy Commissioner of Accident on the Form US-201. Just so the record shows they were considered a part of the record at the hearing is all I am interested in. If you want to keep these copies in the file, it doesn't make any difference to me.

The Deputy Commissioner: You have asked him about his signature on each of these forms?

Mr. Vickery: Yes, sir.

The Deputy Commissioner: I will note Form US-201, the double form used by the employee to report injury to the employer, and the Deputy Commissioner, as Exhibit A at this hearing.

(Thereupon, the document in question was received in evidence and was marked Respondent's Exhibit A, and is filed in the office of the Deputy Commissioner with the other papers in this case.)

The Deputy Commissioner: The carbon copy of Form US-203, Employee's Claim for Compensation, I will mark as Exhibit B.

(Thereupon, the document in question was received in evidence and was marked Respondent's Exhibit B, and is filed in the office of the Deputy Commissioner with the other papers in this case.)

By Mr. Vickery:

Q. Now then, Earl, you say you first saw a doctor about the injury you sustained about a week after this happened?

A. Yes, sir.

Q. Doctor Twidwell, was he the first one you saw?

A. Yes, sir.

Q. He is in Texas City?

A. Yes, sir.

Q. Do you recall whether you saw Doctor Twidwell before or after Christmas?

A. It was a little after Christmas.

Q. Just a few days after Christmas, or was it a few weeks after Christmas?

A. No, sir, it was a few days after Christmas.

Q. As a matter of fact, you didn't go to see Doctor Twidwell until January 13, 1950, did you, Earl?

A. 1950?

Q. That's right, January 13, 1950.

A. Oh, well, I have just forgotten.

Q. It was almost a month after you got hurt before you went to see a doctor, wasn't it?

A. I just don't know, sir. The weeks and days, I just don't know, sir, to be honest.

Q. Doctor Twidwell is the first doctor you saw?

A. Yes, sir, he was the first doctor.

Q. You saw him only one time, is that correct?

A. Yes, sir.

Q. When did you go to Huntsville with your brother?

A. I think it was in February; I don't know, sir, what date it was but it was quite awhile, a pretty good while.

Q. Do you know what month it was in, February, March, April, or May, or just when?

A. No, sir, I just really don't know what month it was in when I went.

Q. Before you went to Huntsville, did you stay in Texas City?

A. Yes, sir.

Q. And you stayed at this 505 South Third Street, is that correct?

A. Yes, sir.

Q. You lived there with your wife?

A. Yes, sir.

Q. Do you have any children?

A. One.

Q. How long after you saw Doctor Twidwell before you left Texas City?

A. Just like I told you awhile ago, I told you I thought it was a few days after Christmas, but you said it was a

month or so. I was giving you the best I know on it.

Q. I want you to tell me the best you know. How long after you saw Doctor Twidwell before you left Texas City?

A. Like I told you awhile ago, I said it was two or three days after Christmas; you said it was a month. I guess it was. I really don't know.

Q. Do you know how long it was after you saw Doctor Twidwell before you left Texas City?

A. Well, no, sir, I don't. Like I told you, I thought it was two or three days after Christmas, but you said awhile ago it was a month. So I just don't know, sir.

Q. Let's get at it this way: Earl, how long have you been living at Madisonville?

A. Since I left Huntsville.

Q. You left Huntsville for Madisonville. How long have you been at Madisonville?

A. Quite awhile. I know it is about four months, I reckon, four months and a half, because I have been up there quite awhile.

Q. About four and a half months?

A. I really don't know exactly.

Q. And you were over at Huntsville about two weeks, is that correct?

A. No, sir, I was in Huntsville longer than that.

Q. I thought you said two weeks, a minute ago; I am not sure. How long were you in Huntsville?

A. I said the doctor in Huntsville looked after me for two weeks, but I was in Huntsville a little bit longer than two weeks.

Q. Now, this doctor that you went to see in Huntsville, how many times did you see Doctor Beasley?

A. Twice.

Q. You saw him twice?

A. Yes, sir.

Q. What kind of treatment did he give you?

A. He fixed me up some medicine and taken an x-ray picture of my shoulder.

Q. Is that the first x-ray that had been made of your shoulder?

A. Yes, sir.

Q. Doctor Twidwell didn't make any x-rays of your shoulder?

A. No, sir.

Q. Did you see any other doctor in Huntsville besides Doctor Beasley?

A. No, sir.

Q. Did you see any other doctor in Texas City besides Doctor Twidwell?

A. No, sir.

Q. Then, when you went to Madisonville, you went to see Doctor Carroll, is that right?

A. Yes, sir.

Q. How many times have you seen Doctor Carroll?

A. About five or six times.

Q. How often do you see him?

A. Well, I see him every time I go down to his office.

Q. I understand that, but is that once a month or once a week or how often, Earl?

A. Well, sir, sometimes I see him twice a week.

Q. But you have only seen him a total of four or five times?

A. Yes, sir.

Q. Have you seen any other doctors in Madisonville besides Doctor Carroll?

A. I went and talked with Doctor McKay?

Q. How many times have you seen him and talked to him?

A. Once.

Q. Other than these doctors you have mentioned here, Earl, have you seen any other doctors since December 19, 1949?

A. Outside of the doctors I told you I seen them?

Q. Yes, outside of these doctors you have told us about, have you been to see any other doctors?

A. No, sir.

Q. Have you been to any hospitals since December 19, 1949, for treatment or examination?

A. Yes, sir.

Q. Which one was that?

A. That was in Rocky Mountain Hospital.

Q. Where is that?

A. In Oakland, Texas.

Q. What doctor did you see there?

A. Well, sir, I just don't know that doctor's name. I don't know his name.

Q. What type of hospital is that, is that a regular hospital or a chiropractor's hospital, or do you know?

A. No, sir, I went there and they examined me and gave me some medicine, they give me a couple of shots in my arm.

Q. That is all they did at the hospital there. Did you just go the one time?

A. Yes, sir, I went one time.

Q. And all they did was give you some medicine and a couple of shots?

A. Yes, sir.

Q. Have you been to any other hospitals?

A. Yes, sir, I been down to Galveston.

Q. What hospital did you go to there?

A. John Sealy.

Q. When did you go there?

A. I don't know exactly; Doctor Carroll sent me but I don't know what date.

Q. Doctor Carroll sent you there from Madisonville?

A. Yes, sir.

Q. What did they do at John Sealy Hospital?

A. They examined me and said my shoulder had set up inflamation from being knocked out of place.

Q. They examined you there at the hospital?

A. Yes, sir.

Q. Do you know what doctor examined you?

A. No, sir, I don't. All I know is that he was a doctor.

Q. They didn't put your arm in a sling or cast of any kind?

A. I had it in a sling and they told me to keep it out of a sling and vote it down.

Q. You put that sling on yourself?

A. Doctor Carroll told me to put it on my neck.

Q. You never had had your shoulder in a cast or anything, had you, Earl?

A. No, sir.

By the Deputy Commissioner:

Q. About when were you there at John Sealy?

A. Sir?

Q. What month were you at John Sealy Hospital?

A. I just don't know what month.

Q. Do you know how long ago it was?

A. It has been quite awhile ago, but I just don't know exactly how long it has been.

May I ask a question, please sir?

Q. Yes.

A. I know you don't have anything to do with it, but just the fact that a person is injured, you don't know what he is talking about, I am telling the thing you are asking me, I was there.

Q. That is all right, but you have been there one time. The reason I was asking about [illegible] I would try to get a report from them and I would see if I knew about what the report was.

A. Would it hurt if I called Doctor Lawson and tell you. He is the [illegible]

Q. What?

A. Doctor Carroll, at [illegible]

Q. I would like for you to [illegible] from what you can.

A. I sure can get one from him.

Q. Get one and send it to me. I will pay for it.

A. Give me your address.

Q. You have my address from me. Get your receipt, and so forth, along, coming to the hearing.

A. Are you Mr. Vickery?

Q. Yes.

By Mr. Vickery:

Q. Earl, all these doctors and hospitals you have been to, these you went to of your own accord?

A. On my own hook?

Q. Yes, sir.

A. No, sir, Doctor Carroll sent me.

Q. Doctor Carroll sent you to John Sealy, but you picked out Doctor Carroll yourself?

A. Oh, yes, sir.

Q. All these other doctors, you have gone there yourself, you weren't sent there by your employer or anyone else?

[illegible]

Q. [illegible] here on your own?

[illegible] you have on any other hospital, even any other [illegible] than the ones you have mentioned here?

[illegible] Then, before you went to work for Mason [illegible] Texas City, Lady, who did you work for?

A. I did not work for the Mason brothers.

Q. You worked for just the Mason, himself?

A. [illegible] Mason brothers.

Q. I understood that, but who did you work for before [illegible] Mason brothers?

A. I was working [illegible] selling station before I went up [illegible].

Q. Was that a filling station in Texas City?

A. [illegible] I worked at one for awhile in Texas [illegible] I didn't work long.

Q. You worked in Texas City—you stayed there about three years.

A. Yes, sir.

Q. And you worked about nineteen months of that time for Mason Brothers?

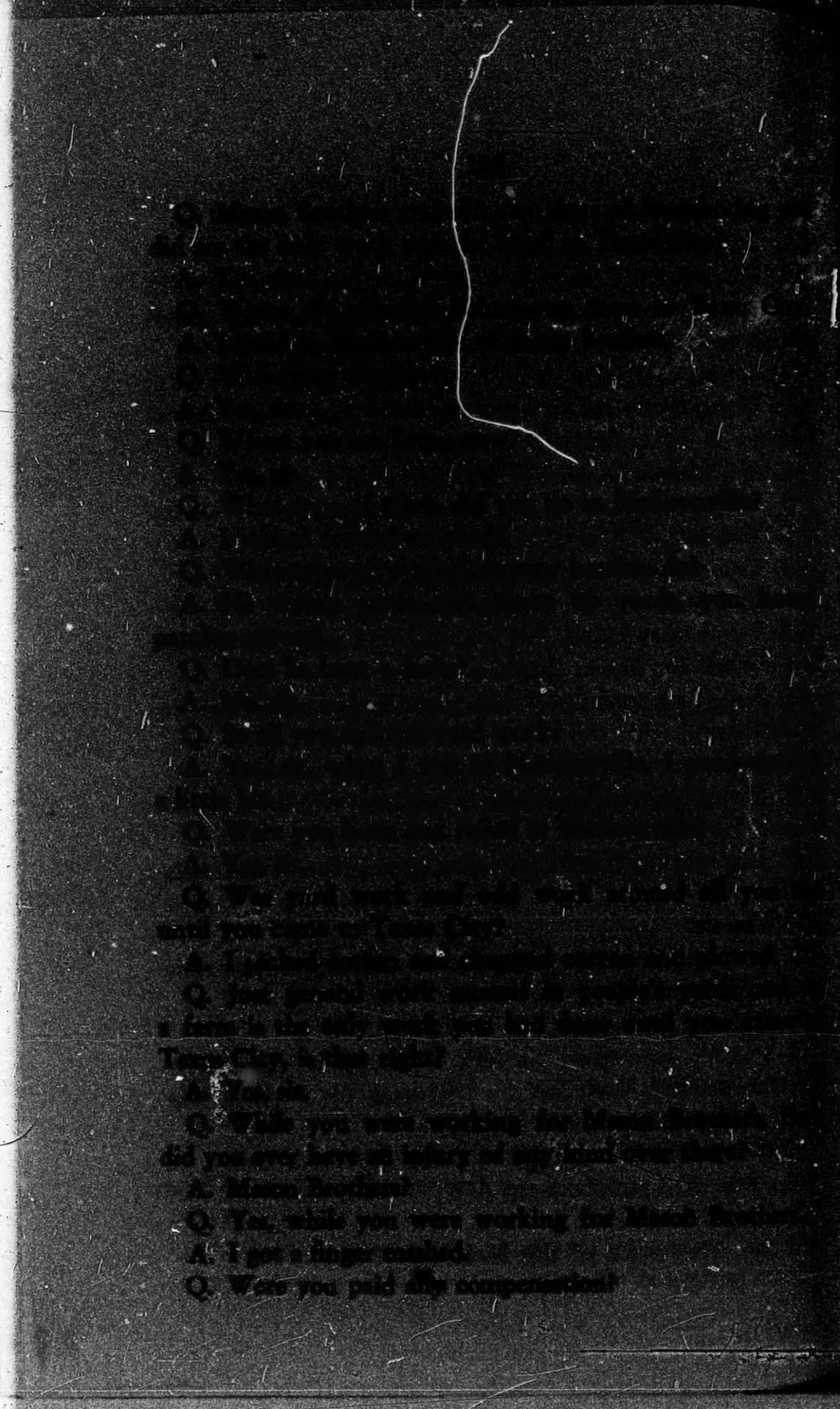
A. Didn't I say eighteen, or nineteen?

Q. I don't remember. It isn't too important just how long you worked. But, but did you work for anybody else in Texas City besides Mason Brothers?

A. No, sir, I only worked one day for Ford, Bacon, & Davis. I worked one there one day.

Q. For anybody else?

A. No, sir, outside of this here.



A. It was a long time.

Q. What kind of work did you do then?

A. I was drawing my Social Security.

Q. Drawing unemployment compensation?

A. Yes, sir.

Q. Are you drawing any of that now?

A. No, sir.

Q. Have you had any other injuries of any kind while you have been working on a job?

A. No, sir.

Q. Just your finger, and this one here, is that all?

A. Yes, sir.

Q. And you have done absolutely no work at all since the day of your injury?

A. No, sir, I haven't done any work.

Mr. Vickery: I believe that's all I have at this time.

The Deputy Commissioner: I have just a point or two here.

By the Deputy Commissioner:

Q. About your wage rate, Earl, how much money did you make in 1949, do you know, about?

A. No, sir.

Q. Did you make an income tax return?

A. Oh, yes, sir.

Q. Have you got your slip showing how much you earned here and there through 1949, have you still got those Internal Revenue slips?

A. Yes, sir, but I don't have them with me.

Q. Can you send them to me?

A. Yes, sir.

Q. Were you on unemployment benefits for part of the year, also?

A. What is that?

Q. Were you drawing unemployment insurance for part of the year, also?

A. Yes, sir, I was drawing $46.00 every two weeks.

Q. How long?

A. Well, I don't [illegible].

Q. You know that exactly?

A. Yes, sir.

Q. [illegible] weeks?

A. Yes, sir.

Q. You think you will have your tax slips that you made out [illegible] income forms for 1949?

A. No, sir, I don't have them. But I ought to have copies of, I did have.

Q. That is all right. I would like to see those if you can and then we can along with the report from Doctor Carroll.

A. Yes, I have with.

Q. Now, about these doctors, did you actually pay them anything, yourself?

A. Yes, sir, Doctor Beasley, I did.

Q. Doctor Beasley, at Hunnsville?

A. At home, my brothers did. I didn't have anything to pay them.

Q. Do you know how much that cost?

A. No, sir, I don't.

Q. You haven't paid Doctor Carroll anything?

A. No, sir.

Q. Have you paid either one of these hospitals anything?

A. No, sir.

Q. I have a little note here written to John Sealy Hospital

for you to sign asking they furnish me whatever information they have about your physical condition as shown by that examination a few months ago. Will you sign that so I can write them a letter and get a report of what they found in Galveston? I want to see this. You see, they have to have your consent before they will give me anything. I want to get this report. If you will put your name there in pencil—

A. Would it be all right for me to sign that?

Q. Yes, I want to get this information together as quick as I can about your condition the last few months, and I would like to have what the doctors will tell us at the John Sealy Hospital.

How long were you down there at the John Sealy Hospital?

A. I didn't stay but two days.

Q. Did they examine you pretty thoroughly?

A. Yes, sir.

Q. Did they x-ray you?

A. No, sir. One doctor x-rayed me, that was the doctor in Huntsville.

Q. Well, you are not signing away your rights here. They need your consent before they give me anything, but you see, and if you will just sign your name to this little statement there, I can write over there and get a report. Just sign your name there. Can you hold the paper with your other hand?

A. Well, not very well.

Q. Did you pay Doctor Twidwell anything at Texas City?

A. No, sir.

Q. And you haven't paid anybody anything, but Doctor Beasley?

A. No, sir.

Q. You don't know how much that is?

A. No, sir, my brother paid that. I didn't have anything.

Q. About your physical condition, are you getting better or worse in regard to the use of your arms and back?

A. Well, sir, whenever I sit down a lot, my back pains a little, but when I walk, it leaves me, and my shoulder, I can't put it up.

Q. Your left shoulder?

A. Yes, sir.

Q. How about your right shoulder?

A. Yes, sir, the misery got in this one too.

Q. How long has it been since you couldn't raise your arm anymore than you are here now? It hasn't been that way since this injury, has it?

A. It got that way directly after, and I went to a chiropractic doctor and he looked at it and he said, "Your arm is out of place."

Q. A chiropractor?

A. Yes, and he put it back and it popped.

Q. Did it feel any different after he put it back?

A. No, sir, it felt a bit better, but before that it kept nagging on me.

Q. You understood it was out of joint at your shoulder, is that right?

A. Yes, sir.

Q. You didn't notice much difference in your feelings after it was set?

A. Yes, sir, it hurt a long time after he put it back; it still hurts me now.

Q. You haven't been able to use that left arm any more than you have right now almost from the time of this injury, is that right?

A. Well, yes, sir, when I first was injured, it didn't hurt me so bad. I felt the lick all right, but it kept nagging and

I was walking along and it commenced hurting. I tried to raise it up and I couldn't, so my brother took me down to a chiropractor doctor and he looked me over and said it was out of place.

Q. That was in Hemosville?

A. Yes, sir.

Q. Do you walk with this cane all the time?

A. Yes, sir.

Q. What do you use the cane for?

A. To help me along in the back. It is a lot of consolation.

Q. What part of the back bothers you the most?

A. A little bit up above my belt.

Q. In the middle of your back?

A. Yes, sir.

Q. What kind of feelings do you have there?

A. In my arm?

Q. Can you tell me what kind of feeling you have in your back?

A. Yes, sir, it feels like sometimes it throbs.

Q. Throbs?

A. Yes, sir.

By Mr. Vickery:

Q. Who is Lester Lovely?

A. He was one of the fellows with us that witnessed that I got hurt.

Q. Was he down in the hold working with you?

A. No, sir, he was up on the deck talking down to us in the hold.

Q. Who was Karney?

A. I don't know; those are some boys that witnessed I got hurt. I have their names on a piece of paper in my pocket.

Q. Who is L. A. Newman?

The Deputy Commissioner: Karney is working for L. A. Newman Company. Is that what you understood?

The Witness: That was the white man that put his name down that was our checker.

By Mr. Vickery:

Q. L. A. Newman or Karney?

A. That was the man running that machine outfit, that might have been his name.

The Deputy Commissioner: There is a name "Walter" on here too. Is that another longshoreman working there that night?

The Witness: Yes, sir, all the men's names, they were all working there.

The Deputy Commissioner: Do you know where Walter lives, is he in Texas City?

The Witness: Yes, sir, the last time I was there he was there.

The Deputy Commissioner: You don't know his first name?

The Witness: No, sir.

The Deputy Commissioner: Where did you get his name from?

The Witness: Mr. Walter?

The Deputy Commissioner: Yes.

The Witness: Well, I guess he put it down on a piece of paper. Here is the piece of paper they gave me.

(Document handed to the Deputy Commissioner by witness.)

The Deputy Commissioner: Who put these names on this piece of paper?

The Witness: The boys I was working with. They told me they would be a witness for me that I got hurt. I know them when I see them. They put their names on there.

By Mr. Vickery:

Q. Who gave you this list?

A. That is a piece of tablet, a leaf tore out of a tablet, and those boys put their names on it and said they would be a witness I got hurt.

The Deputy Commissioner: Was Ernest Caldwell one of them?

The Witness: Yes, sir.

The Deputy Commissioner: He lives at Texas City, doesn't he?

The Witness: Yes, sir, I know him, Caldwell.

The Deputy Commissioner: Was he working there that night?

The Witness: Yes, sir, he sure was.

By Mr. Vickery:

Q. You don't know the names of any of these fellows working down in the hold with you that night?

A. No, sir, just one, and that is Caldwell.

Q. He was working down in the hold with you?

A. Yes, sir.

The Deputy Commissioner: Do you know his street number?

The Witness: It ought to be on there.

The Deputy Commissioner: 923 some Avenue South, but I can't make it out. Do you know what this is here?

The Witness: No, sir.

The Deputy Commissioner: Let the record show that this hearing is continued to a date to be set when other witnesses are expected to be available at Galveston, Texas.

(Thereupon, the instant hearing was continued.)

EXHIBIT B

FEDERAL SECURITY AGENCY
Bureau of Employees' Compensation
Office of Deputy Commissioner H. A. Voris

Administering Longshoremen's and Harbor Workers' Compensation Act

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EMPLOYEE'S CLAIM FOR COMPENSATION

(To be filed with the Deputy Commissioner in accordance with sections 13 and 19 of the law)

INJURED PERSON

1. Name of employee: Earl Porter. Employee's check No. 400,554.
2. Address: Street and No. General Delivery. City or town: Madisonville, Texas.
3. Sex: Male. Age: 46. Married, single, widowed: Married
4. Do you speak English? Yes. Nationality: American.
5. State regular occupation: Longshoreman.
6. What were you doing when injured? Loading a ship.
7. (a) Wages or average earnings per day, $24.00 (Include overtime, board, rent, and other allowances.) (b) Per week, $135.00. (c) Were you employed elsewhere during week in which you were injured? No. (d) If so, state where and when.
8. Were you paid full wages for day of accident? Yes.

EMPLOYER

9. Employer: Southern Stevedoring Contracting Company.

10. Office address: Street and No. Cotton Exchange Bldg. City or town: Galveston, Texas.
11. Nature of business: Loading and unloading vessels.

THE INJURY

12. Place where injury occurred: Texas City, Texas—S/S Southern States.
13. Name of foreman: Ernest Wisby.
14. Date of accident or first illness, the 19 day of Dec. 1949, at 4:15 o'clock A.M.
15. How did accident happen or how was occupational disease caused? A budget was hoisted to the top of the hold and then fell back striking a beam which fell and struck me across the back and left arm.

NATURE AND EXTENT OF INJURY

16. State fully nature of injury or occupational disease: Muscles, ligaments, bony structure, cartilage and nerves of back and left arm broken, crushed, strained and compressed, causing total permanent disability.
17. On what date did you stop work because of injury? December 19, 1949.
18. Have you returned to work? (Yes or No) No. If "yes," on what date? ....., 194
19. Does injury keep you from work? (Yes or No) Yes.
20. Have you done any work in period of disability? No.
21. Have you received any wages since injury? No. If so, from and to what date?
22. Has injury resulted in amputation? No. If so, describe same .....
23. Did you request your employer to provide medical attendance? Yes. Has he done so? No.

24. Attending physician: Name: Dr. Emil Carroll. Address: Madisonville, Texas.
25. Hospital: Name ..... Address .....

NOTICE

26. Have you given your employer notice of injury? (Yes or No) Yes. When? Dec. 12, 1949.
27. If such notice was given, to whom? The foreman Earnest Wisby.
1. Was it given orally or in writing? Orally and in writing.

I hereby present my claim to the Deputy Commissioner for compensation for disability resulting from an injury arising out of and in the course of my employment and not occasioned solely by intoxication, or by willful intention, and in support of it I make the foregoing statement of facts.

Signed by Earl Porter, Claimant.
Mail address: General Delivery, Madisonville, Texas.

Dated ....., 194..

U. S. Department of Labor

BUREAU OF EMPLOYEES' COMPENSATION

CERTIFICATE

This is to certify that the attached proceedings before the Deputy Commissioner of the Eighth Compensation District of the U. S. Department of Labor, Bureau of Employees' Compensation, in the matter of:

NAME OF PROCEEDING: EARL PORTER

CASE NO. 61-1970

PLACE: Texas City, Texas

DATE: November 10, 1950

were held as therein appears and that this is the original transcript thereof for the files of the U. S. Department of Labor.

ACE REPORTING CO.
Official Reporter

By Ethel Eagleston

U. S. Department of Labor

BUREAU OF EMPLOYEES' COMPENSATION

In the matter of the claim for compensation under the Longshoremen's and Harbor Workers' Compensation Act.

Case No. 61-1970

EARL PORTER claimant

vs.

SOUTHERN STEVEDORING & CONTRACTING COMPANY employer

TEXAS EMPLOYERS' INSURANCE ASSOCIATION insurance carrier

208 Post Office Building
Texas City, Texas
Friday, 10 November, 1950

Met, pursuant to notice, at 9:30 a.m.

BEFORE:

HUGH A VORIS, deputy commissioner of the Eighth Compensation District.

APPEARANCES:

FOR THE CLAIMANT:

Claimant present in person.

FOR THE INSURANCE CARRIER:

E. D. VICKERY (Royston & Rayzor, Attorneys-at-Law) 621 Cotton Exchange Building, Houston, Texas; and

S. B. PETTIGREW, Claims Manager of Texas Employers' Insurance Association.

PROCEEDINGS

The Deputy Commissioner: This is a continued hearing under the Longshoremen's and Harbor Workers' Compensation Act, on the claim of Earl Porter, on account of the injury alleged to have been sustained by him on or about December 19, 1949, while employed as a longshoreman by Southern Stevedoring & Contracting Company at Texas City, Texas.

Previous hearing was held at Houston, September 19, 1950, at which time it was agreed to continue the hearing for the purpose of further investigation and presentation of evidence at Texas City, where the accident occurred.

Now, Mr. Vickery, you have subpoenaed all of the members of the crew as far as you could reach them?

Mr. Vickery: As far as the marshal was able to locate them. I would like to put them all under the law and have them instructed not to discuss the case with each other.

The Deputy Commissioner: Now, suppose you take Wisby first, and then we will take Lovely and Peterman and let them go back to work.

The rest of you take a chair out in the hall or sit on the bench and do not discuss the case.

Thereupon

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ERNEST WISBY

was called as a witness for and on behalf of the respondent, and being then and there duly sworn by the Deputy Commissioner, assumed the witness stand and, upon examination, testified as follows:

EXAMINATION BY THE DEPUTY COMMISSIONER

By the Deputy Commissioner:

Q. You are Ernest Wisby?
A. Yes, sir.
Q. What is your address, Ernest?
A. 810 First Avenue, South, Texas City.
Q. And you are foreman of the stevedores here in Texas City?
A. Yes, sir, foreman of stevedores here.

The Deputy Commissioner: You want to proceed, Mr. Vickery?

Mr. Vickery: Okay.

DIRECT EXAMINATION

By Mr. Vickery:

Q. Mr. Wisby, were you employed aboard the S/S SOUTHERN STATES on or about December 19, 1949?
A. Yes, sir.
Q. In what capacity were you employed?
A. I was serving as walking foreman.
Q. How many gangs were on that ship?
A. Two gangs, at night.
Q. You were working at night?
A. Yes, sir.
Q. Was Earl Porter a member of one of those gangs?
A. Yes.
Q. As walking foreman, that meant you served as the supervisor of the two?
A. I was serving under another foreman. I was sub-walking foreman. There was another one over me.

Q. What I mean by that is that you were sent out from the union hall, like the rest of the longshoremen who went from the hall and who were actually doing the manual labor?

A. Yes.

Q. On this particular day, you were employed by Southern Stevedoring & Contracting Company?

A. Yes, sir.

Q. The next day you might have been employed by any of the other stevedores in this area?

A. Yes.

Q. Your employer changes from day to day?

A. Yes.

Q. From ship to ship?

A. Yes.

Q. You might work all week for one and work a day for another, and a week for another, and so forth?

A. Yes.

Q. You are not regularly employed by the Southern Stevedoring & Contracting Company, are you?

A. No, sir.

Q. And you weren't the person in charge of the loading of that ship, were you?

A. No, sir.

Q. Now then, was any report made to you by Earl Porter that he had sustained an injury of any kind?

A. Yes, he come told me that morning he got hurt.

Q. Did he tell you that morning on the ship?

A. Well, it was on the wharf. They come out of the ship and was on the wharf.

Q. Had you finished work?

A. I wasn't there when it occurred. I went to get some water and they were all outside the ship.

Q. All out of the hold?

A. All out of the hold.

Q. How did he tell you he got hurt?

A. He said he got hurt coming out of the hold, said the lash fired and coming up someway or other, he got hurt. He asked me about sending for a doctor.

Q. Did he tell you he fell off of the ladder?

A. No, sir.

Q. Did he tell you a piece of two by four, or two by six fell and hit him across the back and shoulder?

A. He said something hit him, but he didn't tell me what it was.

Q. Did you take him to a doctor?

A. No, sir. I informed him to take it to the timekeeper. I didn't have authority to send for a doctor. We had a timekeeper on the ship and he was the man supposed to.

Q. You told him to see the timekeeper about getting a slip to go to the doctor?

A. Yes.

Q. You told him he would have to go to the timekeeper and get a slip, that was the man he had to report to?

A. Yes.

Q. Did you take Earl home that morning?

A. Seems like I did. I disremember whether I carried him or sent him.

Q. Was he able to walk all right?

A. He was walking, was walking around.

Q. Did you see Earl after that, in Texas City here?

A. He came that morning after I went home. I went home and went to bed and he came and told me who was going to carry him to the doctor. That was about 9:00 o'clock in the morning. I informed him that he is supposed to get in touch with the timekeeper. I thought he had already went to the doctor.

Q. You told him again the man he had to report his injury to was the timekeeper?

A. Yes, sir.

Q. You told him you had no authority to send him to a doctor?

A. Yes, sir.

Q. You don't, as walking foreman on a ship, have authority to send a man working under you, to a doctor?

A. Where there is no timekeeper—if no timekeeper is present, I give them the orders.

The Deputy Commissioner: If the timekeeper is not present, what?

The Witness: If the timekeeper is present, he gives the slip. I have never been told on this particular work I was supposed to give orders to go to the doctor.

The Deputy Commissioner: If the timekeeper is not present, what about it?

The Witness: I guess it would come under the head of the head foreman.

By Mr. Vickery:

Q. That would not be you?

A. That would be another fellow over me.

Q. And you don't have authority to send a man to a doctor after he has been hurt?

A. Not on this ship. I was never given authority on this ship.

Mr. Vickery: I believe that is all.

By the Deputy Commissioner:

Q. Who is the foreman immediately over you?

A. I don't know the fellow. It is a tall fellow. I seen him out here—I don't know his name. He was the man over me.

Q. What are your instructions about reporting injuries? Don't they report to their immediate foreman first?

A. They report to the immediate foreman; tell me and I inform them to get hold of the doctor. But on this job, I didn't. I was filling in there as walking foreman, at night, as assistant, I guess. I don't know who was over me. I think Harrison was supposed to be walking that ship; I think he was. Another boy was over him.

Q. Who was over you?

A. I don't know his name.

Q. As a matter of general practice, don't the men report to the immediate foreman?

A. Yes, immediate foreman and foreman in turn.

Q. You leave it to the men to go find the timekeeper, find their way around?

A. I reported it to the timekeeper myself, and told him Earl got hurt.

Q. Who is the timekeeper?

A. Mr. Tarpey.

Q. Is that R. J. Tarpey?

A. Yes, that's right. I report to him and he in turn is the man supposed to have the slip to go to the doctor. Because I wouldn't know what doctor to send them to.

Q. You have had injuries happen before, while you were foreman of a gang, haven't you?

A. Yes, sir. Now like this, I am foreman on this job here—I send him up here to this doctor here. I have the authority, when the other man is not present I can act in

his stead. When he is present, he does that.

Q. What is the general practice where the timekeeper or the man immediately over you is not present where the injured man can report to him, what do you do?

A. On this particular job, I send him up to the doctor.

Mr. Vickery: That is the one you are working on now?

The Witness: Yes, sir.

By the Deputy Commissioner:

Q. If they are not present on the other job, what are your instructions?

A. I never had authority.

Q. Don't you help the men find the timekeeper?

A. I report it to the timekeeper.

Q. Didn't you help him find the timekeeper the next morning?

A. I reported to the timekeeper. I thought he had went to see the doctor. I thought he had seen him and gone. I thought he had already been carried to the doctor on this particular job.

Q. You don't recall whether you took him home that night or not?

A. It seems to me like I sent him home on the truck that morning by one of the other boys.

Q. And Earl was working there that night?

A. Yes, sir, he was working.

Q. As far as you remember, it was about the 19th of December?

A. Yes, sir, he was working. He reported to me that morning. I came to get some water and when I came back, they were out, and he told me he got hurt coming out of

the hold. They were all running and he got injured some way.

Q. You don't know just how the accident happened? You weren't present?

A. No, sir, I wasn't present.

The Deputy Commissioner: Earl, do you want to ask Mr. Wisby any questions here?

The Claimant: Yes, sir.

The Deputy Commissioner: Go ahead and ask any questions you want to.

12 CROSS EXAMINATION

By Mr. Porter:

Q. Mr. Wisby, two fellows put me in your car and told you to get me to the doctor. Do you remember them?

A. I know they told me to carry you home. Didn't somebody carry you in my car, or did I carry you?

Q. Yes, sir, I was in your car, and you told me you couldn't get me no doctor until 7:00 o'clock and at 7:00 o'clock you would get me to the doctor. So I sent my wife to your house and she said your wife said you were asleep.

A. No, I reported to the timekeeper. I informed you the timekeeper was the one to send you to the doctor because I didn't have the authority.

The Witness: But I do know he was hurt and I don't know if I brought him home or sent him that morning, but I know I seen to him getting home and Mr. Tarpey was the one was supposed to see to him getting to the doctor.

By the Commissioner:

Q. You don't have any recollection of Earl having trouble walking from the car to the house that night?

A. That morning, you mean?

Q. Whoever drove him home.

A. No, they were excited on account of the fire. I don't recall whether he had to be helped around or not.

Q. I mean the fact that he has stated he had to crawl on his hands and knees from your car into his house on account of not being able to straighten up,—that wouldn't refresh your memory to recall whether you took him home or not?

A. No, sir, I know if I had took him home I would know that. But I must not have taken him home because I don't recall him crawling from the car to his house.

The Deputy Commissioner: All right. Anything further?

Mr. Vickery: That's all.

(The witness thereupon was excused and retired from the witness stand.)

The Deputy Commissioner: You can go back to work now. And send Lovely or Peterman in.

Thereupon

14 LESLIE LOVELY

was called as a witness for and on behalf of the respondent, and being then and there duly sworn by the Deputy Commissioner, assumed the witness stand and, upon examination, testified as follows:

14 EXAMINATION BY THE DEPUTY COMMISSIONER

By the Deputy Commissioner:

Q. Your name is what?
A. Leslie Lovely.
Q. And what is your mailing address?
A. 615 First Avenue, South.
Q. Texas City?
A. Yes, sir.

The Deputy Commissioner: You want to proceed?

Mr. Vickery: All right.

14 DIRECT EXAMINATION

By Mr. Vickery:

Q. Mr. Lovely, were you employed on board the S/S SOUTHERN STATES on or about December 19, 1949?
A. Yes, sir.
Q. In what capacity were you employed, what was your job?
A. Gang foreman.
Q. Were you gang foreman of the gang in which Earl Porter was working?
A. Yes, sir.
Q. Do you remember him working in that particular gang?
A. Yes, sir.
Q. As gang foreman, just where on the ship did you work, where did you stand?
A. I stood along deck, on the deck of the ship, just in front of the crane operator giving signals.

Q. This crane operator, was a crane being operated on the ship or was it operated from the shore?

A. Operated from the shore.

Q. You weren't using the ship's winches?

A. No.

Q. Was that also being operated by one of the longshoremen?

A. The crane operator?

Q. Yes.

A. No.

Q. And you were signalling him?

A. It was one of the employees.

Q. On this particular night, did Earl Porter say anything to you about being hurt or injured in any way?

A. He didn't say anything, but he couldn't say anything at the time because he was hurt and we all seen he was hurt at the time.

Q. Did you actually see him get hurt?

A. No, sir. I didn't actually see him, because I couldn't see after the load fell. It was so smoky down there, I couldn't see in the hold.

Q. Did he tell you how he got hurt?

A. He said he hit some dunnage getting out of the hold. They scrambled to get to the manhole and knocked him over and he fell down on the dunnage.

Q. I see. He fell down on the dunnage?

A. Yes, sir.

Q. In your capacity as gang foreman, you didn't have any authority to send anybody to the doctor after he got hurt, did you?

A. No, sir.

Q. Did he say anything to you about what parts of his body were hurt?

A. He just said it was his side. That is all I could see, his side.

Q. Was he able to walk?

A. At the time he wasn't able to walk. They had to put him in a car.

Q. Did you put him in a car?

A. No, sir, I didn't. The other boys did.

Q. Some other members of the gang put him in a car?

A. Yes, sir.

Q. Whose car did they put him in?

A. I disremember now whose car.

Q. Was it Ernest Wisby's car?

A. It must have been because he was the only one that had a car down there at the time.

Q. I see. Well now, I am not sure I understand what you said a minute ago about how Earl got hurt. Did you say he fell against some dunnage in the hatch?

A. That is what he said.

Q. That is what he told you at the time, that he fell against some dunnage in the hatch?

A. Yes, sir.

Mr. Vickery: That is all.

By the Deputy Commissioner:

Q. What is this smoke from? You said it was dark and smoky down in the hold.

A. Yes, sir, after the load collapsed on the deck of the ship, why, it looked like they had been hauling sulphur in that barge and when it fell, it caught afire all at once. It made a smoke and went into the hatch.

Q. It caught the sulphur on fire?

A. They had sulphur on the side of the ship.

Q. You don't know whether it was a broken electric wire fell in there?

A. No, sir, I don't.

Q. But it was dark and smoky when you looked in?

A. Yes, sir. I couldn't see those men in there because the smoke went right down; the smoke went down.

Q. You don't know how the sulphur became ignited?

A. No, sir.

The Deputy Commissioner: Do you want to ask any questions, Earl?

The Claimant: Yes, sir.

18 CROSS EXAMINATION

By Mr. Porter:

Q. Was you on deck when two white men put me in P. D.'s car?

A. I must have been on the ground then at the time.

Q. I mean up on top.

A. Yes, I was on the ship then.

Q. Did you see them put me in there?

A. I never paid any attention who put you in there.

The Witness: But I seen somebody put him in the car. Who they were, I don't know, because I was standing off.

By Mr. Porter:

Q. Two white men put me in his car and told him to carry me to the doctor. And he said he couldn't see the doctor before 7:00 o'clock.

A. Yes, he said he couldn't get no doctor at the time, said he would wait until the morning and take you to the doctor.

Q. And he didn't come and take me to the doctor.

The Deputy Commissioner: Who said that?

The Witness: It must have been Wisby, because he is the walker.

The Deputy Commissioner: Anything more?

Mr. Vickery: I don't have anything else.

The Deputy Commissioner: All right.

(The witness thereupon was excused and retired from the witness stand.)

The Deputy Commissioner: Send Peterman in.

Thereupon

19 ALTON PETERMAN

was called as a witness for and on behalf of the respondent, and being then and there duly sworn by the Deputy Commissioner, assumed the witness stand and, upon examination, testified as follows:

19 EXAMINATION BY THE DEPUTY COMMISSIONER

By the Deputy Commissioner:

Q. Your name is Alton Peterman?

A. Yes, sir.

Q. What is your mailing address?

A. 414 Third Avenue South.
Q. Texas City, Texas?
A. Yes, sir.

20 DIRECT EXAMINATION

By Mr. Vickery:

Q. Alton, were you employed on board the S/S SOUTHERN STATES on or about December 19, 1949?
A. I didn't work that Sunday.
Q. You didn't work that night at all?
A. No, sir.
Q. Do you know Earl Porter here?
A. Yes, sir.
Q. Do you recognize him?
A. Yes, sir.
Q. Did you work aboard the ship at all with him?
A. The night before I left.
Q. The night before it happened you did, but not this particular night?
A. Yes, sir.
Q. You weren't aboard the ship any time when Earl Porter is supposed to have sustained an injury; is that right?
A. I wasn't working then.

Mr. Vickery: I don't have any more questions.

By the Deputy Commissioner:

Q. Do you know what night of the week it was you did work with him?
A. That was on Saturday night.
Q. You think it was Saturday night?

A. Yes.
Q. Friday night and Saturday morning?
A. No, Saturday night.

21 CROSS EXAMINATION

By Mr. Porter:

Q. You know we didn't work Saturday night. We worked Friday night and Sunday night.
A. I didn't work Sunday night because—

21 REDIRECT EXAMINATION

By Mr. Vickery:

Q. Did Earl ever tell you how he got hurt aboard the ship?
A. Yes, he done told the rest of the boys he got hurt some way.
Q. I don't want what he told the other boys. Did he ever tell you?
A. No, sir.

Mr. Vickery: That is all.

(The witness thereupon was excused and retired from the witness stand.)

Thereupon

21 J. T. MOORE

was called as a witness for and on behalf of the respondent, and being then and there duly sworn by the Deputy Com-

missioner, assumed the witness stand and, upon examination, testified as follows:

22 EXAMINATION BY THE DEPUTY COMMISSIONER

By the Deputy Commissioner:

Q. Your name is J. T. Moore?
A. That's right.
Q. What is your mailing address?
A. By mail?
Q. Yes.
A. 22 First Avenue South.
Q. Texas City?
A. Yes, sir.

22 DIRECT EXAMINATION

By Mr. Vickery:

Q. J. T., were you employed aboard the S/S SOUTHERN STATES on or about December 19, 1949?
A. Yes.
Q. Did you work aboard that ship that night?
A. Yes, sir.
Q. And were you just a member of the longshoremen's gang, one of the longshoremen?
A. Was I one of them?
Q. Yes, were you one of them?
A. Yes, sir.
Q. Where were you working, down in the hold of the ship?
A. In the hold.
Q. Was Earl Porter working down there with you?
A. Yes, sir.

Q. This man sitting over here?
A. That's right.
Q. He was down there with you?
A. That's right.
Q. Did you see him sustain an injury of any kind that night, J. T.?
A. Yes, sir.
Q. Tell us how he got hurt.
A. Well, when the thing broke off there and the ship caught afire there, you see we all broke and run to get out of the ship.

The Deputy Commissioner: What happened? Start over.

The Witness: When the thing broke and hit that beam up there, and that sulphur caught afire.

The Deputy Commissioner: Beam where?

The Witness: When the bullion hit the beam.

By Mr. Vickery:

Q. The bullion hit this beam and fell down in the hold?
A. The sulphur caught afire.
Q. The sulphur?
A. Yes, sir. We all broke and run to try to get out of there. So I broke and run myself. And when he come out, he was hurt.
Q. Well, now, did you see him when he got hurt?
A. No, sir, I went out before he did.
Q. You went out before he did so you didn't actually see how he got hurt?
A. No, sir.

Q. Did he tell you how he got hurt?
A. He never did.
Q. Never did?
A. No, sir.

Mr. Vickery: That is all.
By the Deputy Commissioner:

Q. Was there a piece of timber or beam or something fell in there?
A. No, the bullion fell back in there. I ran out of the ship before he came out.
Q. The bullion is this board they were carrying out?
A. That heavy stuff, that lead. When he come out, he was hurt.
Q. Do you know whether there was a piece of wood or timber fell in the hold or not?
A. Well, the bullion did fall back there. I don't know what fell outside of the bullion, because I was getting out of there.
Q. Did the lights go out?
A. All the lights went out.
Q. When this fell?
A. That's right.
Q. You don't know if any wires dropped or what caught the sulphur on fire?
A. I don't know what fell. I am just trying to get out of there.

The Deputy Commissioner: You have any questions to ask, Earl?

By Mr. Porter:

Q. Was you on deck when they put me in P.D.'s car?

A. Yes, I was there when they put you in a car and someone spoke and said, "someone take this man to a doctor."

The Deputy Commissioner: You don't know whose car?

The Witness: I don't remember whose car it was, but anyway, somebody got him away from there. I was sick from that smoke and I don't remember what car, whose car it was.

By Mr. Porter:

Q. You don't remember?

A. Whose car it was.

Q. It was Wisby's car—

The Deputy Commissioner: You let him say.

You did see them put him in an automobile?

The Witness: Yes, I saw him.

The Deputy Commissioner: I understood they were going to take him home. Is that what I understood you to say?

The Witness: Yes, sir.

The Deputy Commissioner: Anything else?

Mr. Porter: No, sir.

Mr. Vickery: I don't have any further questions.

The Deputy Commissioner: That is all you can tell us about what happened?

The Witness: Yes, sir.

(The witness thereupon was excused and retired from the witness stand.)

Thereupon

26 W. C. SMITH

was called as a witness for and on behalf of respondent, and being then and there duly sworn by the Deputy Commissioner, assumed the witness stand and, upon examination, testified as follows:

26 EXAMINATION BY THE DEPUTY COMMISSIONER

By the Deputy Commissioner:

Q. What is your name?
A. W. C. Smith.
Q. And what is your mailing address?
A. 617 Third Avenue South.
Q. Texas City, Texas?
A. Yes, sir.

The Deputy Commissioner: All right.

27 DIRECT EXAMINATION

By Mr. Vickery:

Q. W. C., were you working on board the S/S SOUTHERN STATES on or about December 19, 1949?
A. Yes, sir.
Q. Were you working on there as a longshoreman?

A. I was working there as a longshoreman, but I wasn't a longshoreman.

Q. You were working as a longshoreman but you weren't a longshoreman?

A. What I mean, I was a longshoreman, but they didn't have enough union men, so they hired other men.

Q. You were just working down there to pick up some extra cash?

A. Yes, sir.

Q. Where were you working, in the hold of the ship or on the wharf?

A. On the wharf.

Q. Did you know anything about Earl Porter having been injured aboard that ship on that night?

A. I heard about somebody got hurt, but I didn't know until the next day or so who it was.

Q. Do you know Earl Porter?

A. I knew him.

Q. Did he tell you how he got hurt?

A. No, sir.

Q. Did you see anybody take Earl Porter that morning and put him in the car?

A. I worked that night, not the next day.

Q. It was early the next morning, about four o'clock. Were you working then?

A. Yes, sir.

Q. Did you see anybody put Earl in the car?

A. No, sir, I didn't see them.

By the Deputy Commissioner:

Q. You weren't where you could see any accident on the ship, were you?

A. No, sir, I was running the lift. I couldn't see anything.

Q. On the deck?

A. Yes, sir.

Q. Do you know whether the lights went out in the ship or not?

A. No, sir.

The Deputy Commissioner: Do you want to ask any questions, Earl?

The Claimant: No, sir.

The Deputy Commissioner: All right.

(The witness thereupon was excused and retired from the witness stand.)

Thereupon

29 JAMES RICE

was called as a witness for and on behalf of the respondent, and being then and there duly sworn by the Deputy Commissioner, assumed the witness stand and, upon examination, testified as follows:

29 EXAMINATION BY THE DEPUTY COMMISSIONER

By the Deputy Commissioner:

Q. What is your name?

A. James Rice.

Q. And your mailing address is what?

A. My mailing address is 515 Second Avenue, South, Texas City.

The Deputy Commissioner: All right, go ahead.

By Mr. Vickery:

Q. Rice, were you working on board the S/S SOUTHERN STATES on or about December 19, 1949?

A. I was.

Q. What were you doing on that ship?

A. I was working in the hold.

Q. Were you a longshoreman?

A. Well, I am not a longshoreman. I was doing longshore work.

Q. You were doing longshore work, but you are not a longshoreman?

A. Yes, sir.

Q. You remember Earl Porter, sitting over here, being a member of that gang?

A. I remember him being a member of that gang.

Q. Did you see him sustain an injury of any kind while he was working down there?

A. I did.

Q. And will you just tell us how he sustained that injury?

A. Well, I will go about it the best way I can; because it was kind of a rush at the time the injury happened. You see, we sent our load of bullion up, and when it got to the top, it struck the corner of the hatch and knocked off some of it and tumbled back in there and set the sulphur on fire.

The Deputy Commissioner: Did what?

The Witness: The bullion was knocked off, and coming back against the wall, set the sulphur on fire. When it did, it went all over the ship and the smoke—you could hardly

see. And there was a small way to come out, an incline through the corner of the hatch, before you could come out. There were two ladders, and you had to walk up there. And I think he was knocked off the ladder down below and fell back in the hatch.

By Mr. Vickery:

Q. How far did he fall?

A. I would estimate about, I would say I believe about ten or twelve feet.

Q. Did you actually see him get knocked off this ladder?

A. I did, yes, sir.

Q. You didn't see any—you didn't see a two by four of any kind fall and hit him across the back?

A. I didn't.

Q. Did he fall against any dunnage in the lower hold?

A. There was a bunch of dunnage. It was full of dunnage.

Q. That was when he fell off the ladder?

A. Yes, sir.

Q. Now then, do you recall when you gave a statement about this matter to a representative of the insurance carrier and the Southern Stevedoring & Contracting Company?

A. About three weeks ago.

Q. I see. And do you recall at that time telling that man that you think he fell about three feet off the ladder?

A. Definitely now, just what I told him about that, I don't remember now. Possibly, to be frank with you, when he came to me it had been so long, I really forgot it. I really forgot this man. That was the first time I ever met him, that night on the ship.

Q. Now, the fact you talked to that man and your statement says that he fell approximately three feet off that ladder, does that refresh your recollection about the distance

that he fell, or do you still think he fell nine, ten, or twelve feet?

A. I think the distance of that ladder from the bottom of the ship to the corner was at least ten feet, and the boy was about to the top when he fell.

Q. He was about to the top when he fell?

A. Yes.

Q. Then of course, Earl never did tell you how he got hurt after that, did he?

A. I haven't seen him since.

Q. This is the first time?

A. Yes.

Q. Did you see anybody put Earl in a car that morning?

A. I didn't. He was put in a car, but I didn't see it.

Q. You didn't see it, so you don't know who put him in the car?

A. I didn't see it.

Q. Did any other men fall from the ladder?

A. The checker was in there and was knocked off the ladder during the time, a white fellow, had been knocked off the ladder too.

Q. Who?

A. A white fellow, a checker.

Q. You are sure it was Earl fell off the ladder?

A. I am sure it was him.

Q. You don't know what this bullion knocked loose at the corner of the hatch? Was there anything else that fell besides the bullion?

A. It wasn't anything to fall. Above us wasn't anything. There was nothing in the ship but bullion.

Q. Did the lights go out in the ship?

A. That I can't recall. But it went black, because black smoke was all over the ship. You couldn't see.

Q. It was your idea the bullion itself falling into this sulphur set it on fire?

A. It was my opinion the bullion hit the sulphur coming down, against the wall. There was sulphur all against the corner. And when the bullion fell, I was standing at the top of the hatch waiting for this tray to go out.

The Deputy Commissioner: Do you want to ask him any questions, Earl?

The Claimant: No, sir.

Mr. Vickery: I have one or two more.

By Mr. Vickery:

Q. Did some of this bullion actually fall back down into the lower hold?

A. Yes, sir.

Q. How much of it fell?

A. Well, to be positive, I can't, but two or three balls fell back.

Q. Is this in long flat pieces, or what?

A. See, the pieces are about that long (indicating), and that deep.

Q. And you think three or four of those fell?

A. I do.

The Deputy Commissioner: They are almost in the shape of squares, you mean?

The Witness: Well, it was almost a square; about that long and about that deep (indicating).

The Deputy Commissioner: All right.

(The witness thereupon was excused and retired from the witness stand.)

Thereupon

34 THURMAN MEDLOCK

was called as a witness for and on behalf of the respondent, and being then and there duly sworn by the Deputy Commissioner, assumed the witness stand and, upon examination, testified as follows:

34 EXAMINATION BY THE DEPUTY COMMISSIONER

By the Deputy Commissioner:

Q. State your name please.
A. Thurman Medlock.
Q. What is your mailing address?
A. 1902 Kansas Avenue, La Marque, Texas.
Q. All right.

35 DIRECT EXAMINATION

By Mr. Vickery:
Q. Thurman, were you employed aboard the S/S SOUTHERN STATES on or about December 19, 1949?
A. Yes, sir.
Q. And what were you doing aboard the ship?
A. I was handling bullion bars loaded on little wood palets.
Q. A wooden pallet?
A. Yes, sir.
Q. Were you actually working down in the hold?
A. Yes, sir.

Q. Do you recall Earl Porter being a member of the gang you were working in?

A. Yes.

Q. Did you see him sustain an injury of any kind on that date?

A. Yes, sir.

Q. Did you actually see him get hurt?

A. Yes, sir.

Q. Tell us briefly how he got hurt.

A. Well, as we were—the sulphur was burning; and everybody broke in a scramble, and as I saw him, he was on the floor, kind of drawn up like that (indicating), and when he got up, I was almost to him. He started up the ladder and stopped and was trembling on the ladder. I ran past him and out. I don't know what else happened.

Q. The first time you saw him was when he was down on the floor, on the bottom?

A. Yes.

Q. You don't know how he got there, whether he fell off the ladder or what happened?

A. No, sir.

Q. Did you later see anybody put Earl Porter in a car?

A. No, sir.

Mr. Vickery: I believe that is all.

36 FURTHER EXAMINATION BY THE DEPUTY COMMISSIONER

By the Deputy Commissioner:

Q. Did the lights go out in the ship at that time?

A. Well, the lights of the cord that got cut, went out. I was excited and didn't take time to see.

Q. There was scattered burning sulphur around?

A. Yes, sir, the ship had aload of sulphur and there was an electric cord coming over here, and the winch man dropped a load of bullion and cut that cord and it ignited the sulphur.

Q. You think that happened?

A. Yes, sir.

Q. What, if anything, fell from above you besides this ore, this bullion? Did anything fall down there that you know of?

A. Not that I know of.

Q. And you didn't see Earl any more after you saw him start up this ladder and sort of hesitating?

A. That is the last time I saw him. I went up the side of the ladder, got in front of him and went on up to the top.

Q. But you first saw him laying on this dunnage there?

A. Yes.

Q. That is when the thing first started?

A. Yes.

Q. You didn't see him after he was out of the ship, that you know of?

A. I went off the ship about 250 feet before I stopped, getting out of there.

Q. You didn't want to be in any more Texas City disasters?

A. I hoped not.

The Deputy Commissioner: Earl, do you have any questions to ask this man?

The Claimant: No, sir, Mr. Voris.

Mr. Vickery: That is all.

(The witness thereupon was excused and retired from the witness stand.)

Thereupon

37 EARNEST CALDWELL

was called as a witness for and on behalf of the respondent, and being then and there duly sworn by the Deputy Commissioner, assumed the witness stand and, upon examination, testified as follows:

38 EXAMINATION BY THE DEPUTY COMMISSIONER

By the Deputy Commissioner:

Q. State your name.
A. Earnest Caldwell.
Q. What is your mailing address?
A. My what?
Q. Where do you get your mail?
A. 923 Third Avenue, South.
Q. Texas City?
A. Yes, sir.

38 DIRECT EXAMINATION

By Mr. Vickery:

Q. Earnest, were you employed aboard the S/S SOUTHERN STATES on or about December 19, 1949?
A. Yes, sir, I was working down there.
Q. And what type of work were you doing?
A. I was helping them unload that tin, I think they call it.
Q. Tin bullion?

A. Yes, sir.

Q. Were you working down in the hold?

A. Yes, sir.

Q. Do you recall Earl Porter, this fellow sitting over here, being a member of that particular gang?

A. Yes, sir.

Q. Was he working down there with you?

A. Yes, sir.

Q. Did you see him sustain an injury of any kind?

A. Well, I seen him when he fell. I don't know what, whether the plank hit him, I don't know how he was hit. We was rushing to go out, to get out. The smoke was in there. I knowed he fell or either a plank hit him, because all that bullion fell back in the hold, lots of it.

Q. You say he either fell or a plank hit him?

A. Yes, sir.

Q. You didn't see any plank hit him?

A. I seen a plank flying up, when it hit one end of the plank.

Q. He stepped on the plank and that caused it to fly up?

A. No, I can't tell that.

Q. Did you see him fall off the ladder?

A. No, sir, I didn't see that. I heard the boys tell him, holding him—there was too much smoke in there to see.

Q. Now, Earnest, do you remember giving anybody a signed statement about how this accident happened, about a month ago?

A. Yes, sir.

Q. At that time, you told him your best recollection of how that man got hurt, didn't you?

A. That's right.

Q. You didn't put anything in that statement that wasn't true, did you?

A. No, sir.

Q. You tried to tell him everything you knew about it?

A. Everything I knew about it I tried my best to tell him, as straight as I could.

Q. Do you remember telling him you saw "Earl Porter fall off the ladder while he was coming up to the lower hatch. I guess he fell six or seven feet"?

A. That is what I said. I told him he fell. I didn't say he fell off the ladder. There is two ladders when you first start up. That is when they all rushed going up it.

The Deputy Commissioner: You saw him fall, but you didn't see him fall off the ladder?

The Witness: When he was going down, it looked like he fell off the ladder, going up. I don't know if the plank knocked him off or he fell off.

By Mr. Vickery:

Q. He fell on these boards at the bottom of the hatch?

A. Yes, sir.

Q. Did he then get back up and go up the hatch himself?

A. I don't know. There was so much smoke, it seemed like the boys assisted him. I was at this end and all of them were pushing him up. They said, "Come on, you can make it." That is all I could see. There was too much smoke. I laid down in the hold where the smoke couldn't hit me, for the boys to get outdoors.

Q. Did you see anybody put Earl Porter in a car after that?

A. I heard them talk about carrying him to the doctor. They ask P. D., I think he was kind of a boss there, and this little fellow working on the boat said to carry him to the doctor, and nobody did. He was laying on the ground.

The Deputy Commissioner: What is that about laying on the ground?

The Witness: He was laying down there stretched out. I was coming by and I seen him laying down. I don't know for sure if he was or not, because I was scared too because I was looking for the boat to blow up.

Mr. Vickery: We would like at this time to offer typewritten copy of a statement which Earnest Caldwell gave to us about the matter. We do not now have the signed original copy of it, but we will present that later; and I would like to get him to present his signature on the bottom of his typewritten copy for the purpose of comparison with the original which we will submit to you, so there can't be any question about his original statement, if that is agreeable.

The Deputy Commissioner: All right.

Are you making any different statement now than you did to the investigator?

The Witness: I hope—I am trying to tell you the same thing I tried to tell that fellow like I am telling you all.

The Deputy Commissioner: All right. Will you sign this statement then?

Mr. Vickery: Sign at the bottom there so we can have your signature.

(Document handed to witness for signature.)

Mr. Vickery: I want to introduce this and we will send you the original.

The Deputy Commissioner: I will accept this as an exhibit and consider this as his signature.

Do you want to read this through and see if it is the same statement you made?

The Witness: You read it.

Mr. Vickery: You want me to read this?

The Witness: Yes, sir.

(Mr. Vickery then read the written statement of Earnest Caldwell.)

The Witness: The only thing, that ladder is the only thing he misunderstood me. I said I saw him fall in the rush. Everybody was rushing up the ladder and I saw him fall, but that is the only difference in it.

By Mr. Vickery:

Q. That is the only difference in your recollection now and what you told the investigator?

A. Yes, sir. Everything is correct on that except seeing him fall off the ladder. I couldn't tell, because everybody was rushing, getting up that one ladder. Smoke was in there and you couldn' tell what was going on. But he fell on that ladder.

Q. You did state a board hit him.

A. I said he must have fell or a board hit him.

Q. You don't know if a board flew and hit him or not?

A. No, sir.

The Deputy Commissioner: I will hold the exhibit until later. There are two or three others.

By the Deputy Commissioner:

Q. You say you saw him several days later?

A. Yes, sir, and he was walking with a cane or crutch.

Q. You don't know why he wasn't sent to a doctor, do you?

A. No, sir, I asked somebody was he going to the doctor and he said he didn't know if he was going or not.

Q. Do you know how he got home that night?

A. No, I didn't see him because we started back to work and he left.

Q. You did see him out on the ground after this accident happened?

A. Yes, sir. That was 20, 30, or 40 minutes. It took that long to get the smoke out.

Q. Did he look or act like he was hurt?

A. Yes, sir.

Q. You understood he was hurt that night in the accident?

A. Yes, sir.

The Deputy Commissioner: Earl, do you have any questions?

The Claimant: No, sir, Mr. Voris.

The Deputy Commissioner: All right, that is all.

(The witness thereupon was excused and retired from the witness stand.)

Thereupon

44 J. D. WASHINGTON

was called as a witness for and on behalf of the respondent, and being then and there duly sworn by the Deputy Commissioner, assumed the witness stand and, upon examination, testified as follows:

44 EXAMINATION BY THE DEPUTY COMMISSIONER

By the Deputy Commissioner:

Q. State your name.
A. J. D. Washington.
Q. What is your address?
A. 109 Sixth Street, South.
Q. Texas City?
A. Yes, sir.

The Deputy Commissioner: All right, Mr. Vickery.

44 DIRECT EXAMINATION

By Mr. Vickery:

Q. J. D., do you recall working on board the S/S SOUTHERN STATES in December, 1949?
A. Yes, sir.
Q. Were you working on there as a longshoreman?
A. Yes, I was.
Q. What type of work were you doing?
A. I was working down in the hatch.
Q. Were you down in the hold?
A. Down in the hold, loading.
Q. Was Earl Porter a member of the same gang you were?
A. He was, on Friday.

Q. Friday night is the only night you worked?
A. I didn't work Saturday or Sunday night either.
Q. You didn't see Earl sustain an injury of any kind?
A. No, sir.
Q. Did he tell you how he got hurt?
A. I believe that was the last time I seen him.

By the Deputy Commissioner:

Q. Do you know what night of the week you worked?
A. That Friday night. I don't know exactly the date, but I think it was Friday night.
Q. Before Christmas?
A. Yes, sir, before Christmas. I told a guy last night, I told him I hadn't worked that night. I work in Freeport and that caused me to miss $11.60.

By Mr. Vickery:

Q. Are you sure you didn't work that night?
A. No, I didn't.
Q. If the stevedoring record shows you worked that night, you wouldn't say they were wrong, would you?
A. I didn't work. I only worked Friday night.

Mr. Vickery: The record shows he didn't work on that particular day.

The Deputy Commissioner: I guess that is all.

(The witness thereupon was excused and retired from the witness stand.)

Thereupon

46 RUFUS GILES, JR.

was called as a witness for and on behalf of the respondent, and being then and there duly sworn by the Deputy Commissioner, assumed the witness stand and, upon examination, testified as follows:

46 EXAMINATION BY THE DEPUTY COMMISSIONER

By the Deputy Commissioner:

Q. What is your name?
A. Rufus Giles, Jr.
Q. What is your address?
A. 305 Second Avenue, South.
Q. Texas City?
A. Yes, sir.

47 DIRECT EXAMINATION

By Mr. Vickery:

Q. Now, Rufus, do you recall working on the S/S SOUTHERN STATES here in Texas City some time in December, 1949?
A. Yes.
Q. Do you recall what dates they were that you worked?
A. No, sir, not exactly the dates.
Q. Do you recall Earl Porter, this man sitting over here, as being in the same gang you were working in?
A. Yes.
Q. Where on the ship were you working, or were you in the hold?

A. We were working in the hold unloading some bullion.

Q. I see. Now, you have already been sworn, haven't you?

A. Yes, sir.

Q. Do you understand your testimony here is just as if you were testifying in a courtroom, don't you?

A. Yes, sir.

Q. Did you see Earl Porter sustain an injury of any kind down there aboard this ship?

A. I seen him laying in the ship when we were all trying to get out. There was only one way out, and we were all trying to get out one hole, and I remember seeing him and a white fellow.

Q. You saw them both laying on the lower deck?

A. Yes, sir, right off from the ladder where we come up.

Q. Did you see him fall off the ladder?

A. No, sir, I didn't see him fall off the ladder.

Q. The only thing you saw was him down on the floor?

A. Down on the floor at the, right at the ladder.

Q. Was he on top of dunnage or on top of the floor plate?

A. On the dunnage.

Q. And there was a white man laying near him?

A. Yes, sir; Mr. Price.

Q. Was he one of the checkers?

A. Yes, sir. I got a statement here once before too.

Q. Did you give somebody a statement about this?

A. Yes, sir, some fellow.

Q. A written statement about it?

A. Yes, sir.

Q. About a month ago?

A. Yes, sir.

Q. And at the time you gave him that statement you told him the facts the best you remembered them?

A. Yes, sir, the best I remembered.

Q. You tried to tell him what you saw and nothing else?

A. Yes, sir.

Q. Do you recall having told that man that you gave that statement to: "I saw Earl Porter fall off the ladder"?

A. Yes, sir, since I got to thinking about it, I did.

Q. You saw him fall?

A. Yes, sir.

Q. You recall telling him, "I think he fell fifteen or twenty feet and I think he fell flat on his back"?

A. Yes, sir.

Q. Does that refresh your recollection?

A. Yes, sir.

Q. Is that what happened?

A. Yes, sir.

Q. You actually saw him fall?

A. Yes, sir.

Q. You still think he fell fifteen or twenty feet?

A. Yes, sir. Those bars are what, two feet, on a ship, one of those ladders?

Q. I don't know, Rufus. I wasn't there.

A. You have seen those ladders built?

Q. They are different on each ship, aren't they?

A. They are the same bars; the same ladders.

Q. You are talking about the regular steel rung ladders?

A. Yes, sir. I imagine it was fifteen or twenty feet—fifteen, I know.

Q. Did you help him out of the hold?

A. Yes, sir. Rice and Caldwell pushed him near the top and I pulled him on out.

Q. Did you see anybody put Earl in a car that morning?

A. No, sir.

Q. Did you see anybody carrying Earl to a car?

A. No, sir. When I left, Earl was sitting on a little old house, sitting there at the little old house they had built over there, like a timekeeper's house.

Q. Was anybody with him?

A. No, sir, nobody was standing there but just him.

Q. He wasn't inside the house?

A. No, sir, he was standing beside the house.

Mr. Vickery: I believe that is all.

FURTHER EXAMINATION BY THE DEPUTY COMMISSIONER

By the Deputy Commissioner:

Q. You came on out of the hold ahead of Earl?

A. Yes, sir.

Q. And you saw him laying on the dunnage?

A. Yes, sir.

Q. Is that where he fell when he fell from the ladder?

A. Yes, sir. You see, the dunnage was right beside the ladder. We had to come up the opposite side of the dunnage to get to the ladder.

Q. These cubes of bullion fell from overhead?

A. The bullion was at one end, and we had to come out the other end.

Q. Do you know anything about any wooden pieces flying or falling in there?

A. No, sir.

Q. As I understand it now, he was laying on this dunnage, and that is after he fell from the ladder?

A. Yes, sir.

Q. And you went on out and left him there and helped him when he got to the top?

A. Yes, sir. But didn't anything fall in the ship. It was just sulphur was at the top of the ship and when the bullion fell there, it blowed the light out and caused it to ignite and catch on fire. The bullion fell on top of that. It didn't fall in the hold or the ship where we were. The sulphur caught in the top.

Q. Was there anything that fell down in the hold that you know of?

A. Nothing but that sulphur and fire.

Q. You were in the bottom, the lower hold?

A. Yes, sir.

The Deputy Commissioner: Earl, do you have any questions?

The Claimant: Yes, sir.

51 CROSS EXAMINATION

By Mr. Porter:

Q. You say there was no bullion fell in the bottom of the ship?

A. No, I didn't see any.

By the Deputy Commissioner:

Q. Where was this smoke coming from, from the bottom?

A. No, sir, it came from the top. The fire started—like, you knock that globe off there, and the sulphur caught on fire, and like you light gasoline here and scatter all over the room.

Q. The smoke was overhead, and all of you started running for the ladder?

A. Yes, sir.

Q. There wasn't any smoke in the bottom?

A. Yes, sir, about that close to the floor of the ship (indicating).

Q. Where your were?

A. Yes, sir.

Q. I thought you said the sulphur was on the deck above you?

A. There wasn't but one deck in the ship, but it has separate hatches. We were in the lower deck but the sulphur was at the ceiling of the ship where the lights is; like you got sulphur there, the light catches on fire, it drops down and your fire is burning in from the top and the bottom, all over the ship.

Q. It was not right around you?

A. It was in the entire hold.

Q. I haven't got it straight yet whether there was any fire on the same level or deck or hold you were in.

A. We was all working in the same hold, see.

Q. Yes.

A. Just like, here is a gang here and here is a gang here (indicating). We are all in the same place working. When they pull up this tray over there, this is the one the guy is dropping, the operator.

Q. It didn't fall down on the same deck you were on?

A. It fell on the top deck of the ship, like you are here, and—

Q. It didn't come down where you were at all?

A. No, sir, it didn't come down where we were at all.

The Deputy Commissioner: Any more questions, Earl?

By Mr. Porter:

Q. You said that bullion did fall?

A. I didn't say it didn't fall. I said it didn't come in the hatch hold. If it had come in the hatch hold, it would have killed all of us.

By the Deputy Commissioner:

Q. You don't know about any timber or anything else falling down there?

A. No, sir.

The Deputy Commissioner: Anything more?

Mr. Vickery: I don't have anything else.

The Claimant: No, sir.

The Deputy Commissioner: That is all then.

(The witness thereupon was excused and retired from the witness stand.)

Thereupon

54 WILLIE TRIPP

was called as a witness for and on behalf of the respondent, and being then and there duly sworn by the Deputy Commissioner, assumed the witness stand and, upon examination, testified as follows:

54 EXAMINATION BY THE DEPUTY COMMISSIONER

By the Deputy Commissioner:

Q. What is your name?

A. Willie Tripp.

A. What is your address?
A. 21 Seventh Street, South.
Q. Texas City?
A. Yes, sir.

54 DIRECT EXAMINATION

By Mr. Vickery:

Q. Willie, do you remember working aboard the S/S SOUTHERN STATES in December, 1949?
A. Yes, sir.
Q. Do you recall what dates you worked on that vessel?
A. No, sir, I don't know what date. I worked that night.
Q. You worked some night?
A. I worked two nights.
Q. Do you recall having worked aboard there with Earl Porter, this boy sitting over here?
A. No, I was on the outside.
Q. You weren't working down in the hatch?
A. No, sir.
Q. Where were you working?
A. I was working out by the box car.
Q. You were on the wharf then. You weren't anywhere on the ship?
A. No, sir.
Q. Do you know anything about him getting hurt that night or either of the two nights while you were working down there?
A. No, I don't know. I think somebody got hurt, but I didn't never see it. I know I was on the outside.
Q. You didn't actually see him get hurt and you don't know how he got hurt?
A. No, sir.

Q. Did you see anybody put him in a car?
A. No, sir.

Mr. Vickery: I believe that is all.

By the Deputy Commissioner:

Q. You didn't see the accident at all?
A. No, sir, I was too far away.

The Deputy Commissioner: All right. That is all.

(The witness thereupon was excused and retired from the witness stand.)

Thereupon

56 CLAUDE NELSON

was called as a witness for and on behalf of the respondent, and being then and there duly sworn by the Deputy Commissioner, assumed the witness stand, and upon examination, testified as follows:

56 EXAMINATION BY THE DEPUTY COMMISSIONER

By the Deputy Commissioner:

Q. What is your name?
A. Claude Nelson.
Q. What is your address?
A. 326 Third Avenue, South.
Q. Texas City?
A. Yes, sir.

The Deputy Commissioner: All right.

By Mr. Vickery:

Q. Claude, do you recall working aboard the S/S SOUTHERN STATES here in Texas City some time in December, 1949?

A. Yes, sir.

Q. How many days did you work on that ship?

A. One day, one night.

Q. What night was that?

A. On a Friday night.

Q. On a Friday night?

A. Yes, sir.

Q. You didn't work on Sunday night?

A. No, sir. I got my fingers smashed Friday night and didn't go back after that.

Mr. Vickery: That is all.

By the Deputy Commissioner:

Q. You know Earl Porter here?

A. Yes, sir.

Q. Did he work with you on Friday night?

A. I disremember if he was in the hatch. We have different hatches there.

Q. You did work in the hold of the ship Friday night?

A. Yes, sir.

Q. What time of month did you say it was?

A. A little before Christmas, I imagine about a week or two or three weeks before Christmas.

The Deputy Commissioner: All right. That is all.

(The witness thereupon was excused and retired from the witness stand.)

Thereupon

57 WILLIE BERKES

was called as a witness for and on behalf of the Respondent, and being then and there duly sworn by the Deputy Commissioner, assumed the witness stand, and upon examination, testified as follows:

58 DIRECT EXAMINATION

By Mr. Vickery:

Q. What is your name?
A. Willie Berkes.
Q. What is your address, Willie?
A. 521 First Avenue, South.

The Deputy Commissioner: Texas City?

The Witness: Texas City.

By Mr. Vickery:

Q. Now, Willie, did you work aboard the S/S SOUTHERN STATES here in Texas City some time in December, 1949?
A. Yes, sir.
Q. Do you recall what dates they were?
A. No, sir, I can't call the date it was.
Q. You understand this testimony you are giving here is the same as if you were testifying in the courtroom, Willie?

A. Yes.

Q. Do you recognize Earl Porter, this boy here, as being a member of the gang you were working in?

A. Yes.

Q. Where were you working in the Southern States, in the hold or—

A. In the hold.

Q. You were working in the hold?

A. Yes.

Q. What type of work were you doing?

A. We were loading bullion on trays.

Q. Loading bullion on trays?

A. Yes.

Q. Do you recall Earl Porter having sustained an injury of any kind aboard this ship?

A. Well, I don't know. When the fire was started, I was the first one out of the hold. I don't know; I was gone. I run, and when I came back they had him outside laying down, trying to get somebody to carry him to the doctor, trying to get a way to carry him to the doctor.

Q. Was he out on the wharf at the time?

A. When he got hurt?

Q. Yes.

A. No, sir, he was in the hold.

Q. At the time you saw him, was he on the dock?

A. When I saw him hurt, he was out on the dock.

Q. You didn't actually see him get hurt?

A. No, sir, I didn't.

Q. Did he ever tell you how he got hurt?

A. All I remember he said was he fell, or something, I remember seeing him down there that night and he hurt his back or something.

Q. Did you see anybody take Earl and put him in the car that morning?

A. No, sir, I didn't.

Q. You didn't help carry him to a car?

A. No, sir.

Q. Are you sure he told you it was his back that was hurt?

A. That is what I remember him saying, it was his back.

Q. He didn't say anything about his shoulder?

A. I don't remember hearing him say it, because when they were standing around him, I was at that window looking at him and they were around asking him questions and things.

60 EXAMINATION BY THE DEPUTY COMMISSIONER

By the Deputy Commissioner:

Q. What happened in there that caused you to leave?

A. Leave the ship?

Q. Yes.

A. Well, me and Rufus was standing up talking and they were carrying a load of bullion out, and I don't know, the bullion started falling off the top deck and made a fire down there, and everybody broke and run. And I run plumb off from the fire. I didn't want to be in there if it blowed up.

Q. You didn't see Earl or anybody fall?

A. I didn't see anybody. I was the first one out of there. I didn't look back.

Q. You don't know if any of this bullion fell back on the same deck you were on?

A. It fell up over us, I believe. Up over there, because I was standing on this side, and when it fell, I seen that fire and I lit out.

Q. You didn't see Earl fall in the ship or anywhere else?

A. I didn't, because I was the first one out. I couldn't tell

you who was the one behind me, the next one to me, because I never did look back.

The Deputy Commissioner: Do you have any questions for him, Earl?

The Claimant: No, sir.

The Deputy Commissioner: Anything more?

Mr. Vickery: No, sir.

The Deputy Commissioner: All right. That is all.

(The witness thereupon was excused and retired from the witness stand.)

Mr. Vickery: I wonder if we can have about five or ten minutes.

The Deputy Commissioner: We will take a ten minute recess.

(Recess.)

The Deputy Cor missioner: We will resume.

Thereupon

61 B. D. HARRIS

was called as a witness for and on behalf of the respondent, and being then and there duly sworn by the Deputy Commissioner, assumed the witness stand and, upon examination, testified as as follows:

By Mr. Vickery:

Q. State your full name, please.

A. B. D. Harris.

Q. Mr. Harris, what is your occupation?

A. Contract stevedore.

Q. For what stevedore?

A. Southern Stevedoring & Contracting Company?

Q. Are you a partner in that concern?

A. Yes, I am a partner in the firm.

Q. Did your firm handle the unloading operations aboard the S/S SOUTHERN STATES here in Texas City in December of 1949?

A. Yes, sir.

Q. Do your records indicate on what dates you had longshoremen working aboard that vessel?

A. Yes, sir.

Q. What dates are those, can you give us those?

A. Yes, sir. The 16th, 17th, 18th, and 19th of December.

Q. 1949?

A. 1949.

Q. Do your records show on what dates you had a man by the name of Earl Porter employed?

A. Yes, sir.

Q. What dates was he employed?

A. On the night of the 18th and morning of the 19th, from 7:00 p. m. until 8:00 a. m.

Q. Did he work any time prior to that, did he work on the preceding Friday?

A. I haven't checked it. I don't think he is in the Friday gang. May I check?

Q. Yes, please.

A. The first day he worked was on the night of the 16th and the morning of the 17th. And then he worked again on the night of the 18th and morning of the 19th.

Q. Those were the only nights and mornings that he worked?

A. Yes, sir.

Q. Now then, you have used there to refresh your recollection your time records for the stevedoring work which was done on this particular vessel?

A. Yes, sir.

Q. Were you, Mr. Harris, in charge of the loading operations aboard that vessel?

A. Discharging operation aboard the vessel, yes, sir.

Q. That means you exercise the general supervisory control over the operations. You weren't present during all the actual unloading operations, were you?

A. No, I set the operations up and come back and checked it from time to time.

Q. Then on the night of the 18th and the morning of the 19th, who was in charge of the work aboard this vessel for the Southern Stevedoring & Contracting Company?

A. A. P. David.

Q. Was he your agent in charge of the work aboard this vessel?

A. He was the man left in charge of the work aboard the vessel.

Q. Is he a regular employee of Southern Stevedoring & Contracting Company?

A. He is a regular employee of the company.

Q. Now then, was Mr. R. J. Tarpey also employed aboard this vessel?

A. Yes, he was the timekeeper.

Q. And as a timekeeper, did he have the duty of making

out the reports of any injuries sustained aboard the vessel?

A. He would have, yes.

The Deputy Commissioner: That is Mr. Tarpey?

The Witness: Yes, sir.

By Mr. Vickery:

Q. What, if any, reports did you receive of any of the longshoremen sustaining an injury aboard the S/S SOUTHERN STATES on the night of December 18 or the morning of December 19?

A. None on that ship.

Q. When was the first time that you, Southern Stevedoring & Contracting Company, had notice that Earl Porter was asserting a claim for compensation by reason of an injury allegedly sustained aboard the S/S SOUTHERN STATES?

A. I suppose we heard from Mr. Voris over there, it was about the middle of July. We made up what we call a dummy report on the authority of Texas Employers' Insurance Company, on July 13. And that is approximately the first notice we had of the injury.

Q. From your records and your own recollection, Mr. Harris, can you definitely state notice was received some time after July 1, 1950?

A. Yes.

Q. And the exact date, your records do not show?

A. Our records do not show the exact date.

Q. That was the first notice of any kind, either written or oral, that you had that this man had sustained an injury of any kind?

A. That is correct.

Q. Do you have any knowledge prior to that time that he had sustained an injury of any kind?

A. No.

Q. I wonder if you will let me see those reports you were looking at a minute ago?

(Documents handed to counsel)

A. We have photostatic copies of those. That is a dummy that was set up to report it on, pending some clarification as to whether there was an accident or not.

Q. Did you actually receive a letter from Commissioner Boris with reference to that case?

A. I do not know.

Q. Now then, Mr. Harris, in connection with the unloading operations on this ship, was there also a walking foreman on the ship, by the name of Ernest Wisby, on this particular night?

A. Yes, a colored man.

Q. Is Mr. Wisby a regular employee of the Southern Stevedoring & Contracting Company?

A. No.

Q. He was just hired through the union hall, is that correct?

A. Yes, because it was a colored job, coming under their jurisdiction. And whenever we have only colored men on a ship, we go to the expense of hiring an extra walking foreman from that particular local.

Q. Did he have any authority to send any men in the gang that were injured, to a doctor?

A. No.

Q. Who was the man on the job that had the authority to send a man to a doctor?

A. The timekeeper, Tarpey.

Q. In Mr. Tarpey's absence, who would have that responsibility?

A. It would be up to David to run the ship and make any decisions that had to be made.

67 EXAMINATION BY THE DEPUTY COMMISSIONER

By the Deputy Commissioner:

Q. Were these men from Houston, Mr. David and Mr. Tarpey?

A. Yes, but they know them.

Q. What is the general instructions regarding reporting injuries? Was Wisby authorized to receive notice of injury and report it to the man over him?

A. No, sir. Wisby is there strictly to get the work out of the longshoremen of his color, sir.

Q. As a matter of practice, did you depend on the men finding the proper official, like Mr. Tarpey, or Mr. David, to report any injury to?

A. Usually, the gang foremen would take him immediately to the timekeeper and say, "This man working under me has sustained an injury."

Q. That is his immediate foreman?

A. Yes, what we call a gang foreman.

Q. As a matter of practice, isn't that the way it is reported?

A. Yes, sir. That timekeeper makes up a report and gives the necessary information and tells him to go to the doctor that he chooses; gives him a slip to that effect.

Q. With regard to the time that your company had notice of the injury, I see when this came to my notice, probably in June, I had claimant fill out our form 201 and copy was mailed to you some time in July.

A. It was around the first of July.

Q. I see I received it the 5th and it was mailed out evidently after that.

A. And we immediately asked for instructions from Texas Employers and they told us to make up a dummy report pending certification of the injury.

Q. And you never had any notice of injury from Mr. Tarpey or Mr. David or anybody?

A. No, sir, no notice of injury at that time.

Q. Do you know of some episode or accident happening on that ship that morning of the 19th?

A. Oh yes, sir. They called me immediately, sir, on the telephone.

Q. So far as any injuries, you were not told about it?

A. I was not told there were any injuries.

Q. Who called you up?

A. Mr. Tarpey called me on the telephone at home between 5:00 and 6:00 o'clock this Monday morning it happened.

Q. He didn't say anything about any injury reported to him?

A. No, sir; he simply reported the flash fire and the gang knocked off, and they would go back to work at 7:00 in the morning.

Q. If Wisby had notice of an injury, wouldn't it be part of his duty to tell Mr. Tarpey or Mr. David?

A. Yes, sir. I saw Wisby half a dozen times after that. In fact, I delivered the payroll to him and he delivered back to me the signed receipts from his union. He is a union official, and at no time did he say there was an injury sustained?

Q. That is, you had talked with Wisby direct about the accident on the ship?

A. Yes, sir.

The Deputy Commissioner: Anything further?

69 DIRECT EXAMINATION (Continued)

By Mr. Vickery:

Q. When you took the payrolls to Wisby, was that the Thursday or Friday following this Monday on which the flash fire occurred?

A. Yes, it would be the Friday or Saturday following. I am not sure as to the exact date because it is in an outside case like that where we have only a single payroll, we make it up as quick as possible and deliver it to the local.

Q. I see. Did you later get some receipts, see him personally to get some receipts for this?

A. Yes, sir.

Q. And on neither of those occasions did he say anything to you about anybody being injured aboard the vessel?

A. No, sir.

Q. Now, Mr. Harris, have you checked your records with reference to the unloading operations on the S/S SOUTHERN STATES during December, 1949, to ascertain whether or not there were reports of an injury of any kind on that vessel?

A. We have checked them for that. We have had no report from anyone for an injury on that vessel.

Q. And you have no record or no report of an injury sustained by your employees aboard the Southern States for December, 1949?

A. That is correct.

70 FURTHER EXAMINATION BY THE DEPUTY COMMISSIONER

By the Deputy Commissioner:

Q. Do your records, Mr. Harris, show the amount of money paid Earl Porter for his work on those two nights?

A. Yes, sir. Would you like to—

Q. Well, I just wondered. I have the statement from Texas Employment Commission at Austin, Texas, showing wages received by Earl Porter $54.57, for the fourth quarter of 1949,

A. That is probably the sum total of his earnings for the two evenings. Now, on the last day he could have worked on the ship, he made $24.97.

Q. That is the last night?

A. Yes, sir. And on the previous night, he made $29.60. Does that total it up?

Q. I think so.

The Deputy Commissioner: Earl, do you have any questions you would like to ask Mr. Harris?

The Claimant: No, sir, only, he spoke about what they paid me for the two nights—

You said $24.00.

Mr. Vickery: He said $24.97 for one night, Earl, and $29.60 for the other night—a total of $54.00 and some odd cents. Is that what you were paid those two nights?

The Claimant: No, sir, I was paid $48.00.

The Deputy Commissioner: I think there were some deductions probably.

Mr. Vickery: That was after they took out income tax.

The Claimant: This envelope, they took out $2.40.

The Deputy Commissioner: That is all right. I was just bringing that out as part of some further information I was going to try to get about his earnings for the year.

The Witness: These men doon't seem to realize their take-home pay isn't what they earn. I wish there was some way to bring it more forcibly to their attention. That is the only time he worked for us during the period, sir.

The Deputy Commissioner: All right, sir.

Mr. Vickery: I don't have anything further.

Mr. Harris, if you want to, you are free to go.

(The witness thereupon was excused and retired from the witness stand.)

Thereupon

72 RUHL JEROME TARPEY

was called as a witness for and on behalf of the respondent, and being then and there duly sworn by the Deputy Commissioner, assumed the witness stand and, upon examination, testified as follows:

72 DIRECT EXAMINATION

By Mr. Vickery:

Q. State your full name.

A. Ruhl Jerome Tarpey.

Q. And what is your address, Mr. Tarpey?

A. 31 Eighth Avenue, North.

Q. Texas City?

A. Yes, sir.

Q. Mr. Tarpey, were you employed aboard the S/S SOUTHERN STATES as timekeeper in December, 1949?

A. Yes, sir.

Q. By whom were you employed?

A. By Mr. Harris.

Q. Is that the Southern Stevedoring & Contracting Company?

A. He represents them. He hired me directly.

Q. Were you serving as a timekeeper on board the S/S SOUTHERN STATES on the night of December 18 and the Monday morning of December 19, 1949?

A. Yes, sir.

Q. And of course, your job as timekeeper requires you to be right there at the vessel to keep the time?

A. Yes, sir.

Q. And your duty was to keep the number of hours the various longshoremen worked? Is that correct?

A. Yes, sir.

Q. Now then, in connection with your duties as timekeeper, was it also your duty to make out reports of any accidents or injuries sustained by any of the longshoremen?

A. Yes, sir.

Q. On the night of December 18 and the Monday morning of December 19, what, if any, injuries were reported to you?

A. None to me.

Q. Did you have any knowledge of any of the longshoremen employed aboard the S/S SOUTHERN STATES, on the night of December 18 and the Monday morning of De-

cember 19, 1949, sustaining an injury of any kind?

A. No, sir.

Q. As a matter of fact, Mr. Tarpey, were there any injuries at all sustained throughout the unloading operations on SOUTHERN STATES?

A. Not that I recollect, no, sir.

Q. Had there been any while you were serving as timekeeper, you would have made out the report?

A. Yes, sir.

Q. Now then, you are not a regular employee of Southern Stevedoring & Contracting Company, are you?

A. No, sir, I work for all steamship companies that happen to need a timekeeper, clerk, checker, and so forth.

Q. Do you know Mr. A. P. David?

A. Yes, sir.

Q. Was he also on board the S/S SOUTHERN STATES on the night of December 18 and the Monday morning of December 19?

A. Yes, sir.

Q. And did you know that he was in charge of the work on board that ship for Southern Stevedoring & Contracting Company?

A. Yes, sir.

Q. Now then, Mr. Tarpey, did Ernest Wisby, the walking foreman—do you know him?

A. Yes, sir.

Q. Did he report an injury of any kind to you?

A. No, sir.

Q. Did you later obtain your own pay check from Ernest Wisby and sign a receipt for it?

A. Yes, sir.

Q. When was that, if you recall?

A. I think that was Christmas week, as I recall it. And

Mr. Harris came down on a Thursday night, a Thursday afternoon late, and left our money with Wisby, the money for myself and four checkers we had. And I went down to Wisby's around 8:30 that night, and being timekeeper, I asked Wisby if everything was all right and everybody got their money, and he said everything was all right except some deductions for Social Security. And I said, "In other words, everybody is happy?" And he said yes.

Q. He didn't say anything to you at that time about anybody sustaining an injury?

A. No, sir.

Q. About when was it you had knowledge for the first time that Earl Porter was claiming he had been injured while working aboard that ship? I know you won't know the date exactly.

A. I will say three weeks or a month ago, when an insurance man looked me up on board the GULF BANKER or the GULF SHIPPER. He looked me up on a ship—I don't just remember which one.

Q. Is that the first knowledge you had Earl Porter was claiming an injury of any kind by virtue of his work on SOUTHERN STATES?

A. Yes, sir.

75 EXAMINATION BY THE DEPUTY COMMISSIONER

By the Deputy Commissioner:

Q. What is the general practice about getting these injuries reported, Mr. Tarpey? Now, Wisby, as I understand, was in immediate charge of the gang of colored longshoremen.

A. He is what they call a walking foreman, over all the longshoremen. You might have three or four gangs on a ship.

Q. Are the men instructed any way to report to anybody

but him if they get injured?

A. I think they have common knowledge they have to report to the timekeeper.

Q. Were you on the ship that night?

A. Yes, sir.

Q. Were you there when this something happened?

A. The flash fire—I was sitting in the galley talking to Mr. David, having a cup of coffee.

Q. Did you come out right away?

A. Yes, sir, you bet your bottom dollar on that.

Q. Did you see this man to recognize him?

A. No, sir.

Q. Was anybody laid out injured?

A. No, sir, I come out and all I could see was smoke coming out of there, and everybody was coming out of the hold and taking off. Some of them went as far as 6th Street that night because they were all nervous since the explosion. Mr. David and I got in his truck and run Wisby down and asked if anybody was hurt and he said no. I went to the phone and called Mr. Harris and that was the first question he asked, if we had injuries. And I told him no.

Q. You don't know anything about Earl Porter being put in an automobile and being taken home?

A. No, sir.

Q. Were you around the general scene there for awhile following this accident?

A. Yes, sir, I stayed there until Mr. Harris came down. He knocked everybody off about 5:30 in the morning.

Q. Did you ask Wisby if anybody had been hurt?

A. I asked Wisby if any of the boys were hurt and he said no. And I found a phone about three or four blocks off and called Mr. Harris and got him out of bed. And he came on down there and was there about an hour or an hour and a half.

Q. Had you worked with Wisby before, on jobs?

A. Yes, sir.

Q. And he is supposed to report these injuries to you or Mr. David or somebody in charge of him, does he?

A. Yes, sir.

The Deputy Commissioner: Earl, do you have any questions to ask?

The Claimant: No, sir. I don't remember seeing him down there.

The Deputy Commissioner: Who did you get your money from?

The Claimant: Ernest Wisby is the one that paid me.

The Deputy Commissioner: I see.

Anything else?

78 FURTHER DIRECT EXAMINATION

By Mr. Vickery:

Q. Mr. Tarpey, on the type of job like this, it is the usual procedure for the money to be left with some union official like Mr. Wisby, and each member of the gang goes by and gets his money. That is the usual procedure so far as paying off is concerned?

A. That's right. Mr. Harris here probably couldn't find me. We were in a hurry. He left all the money, for the timekeeper and the clerks, down there.

By the Deputy Commissioner:

Q. What was the general scene out there, Mr. Tarpey?

A. You have seen these flash fires, haven't you, go up with a big ball of smoke and flame. But the smoke stays there and the fumes.

Q. That is the way it was when you got there?

A. And I saw them coming out of that hatch.

Q. You don't recall any man coming out with the help of somebody else back of him and pushing him?

A. No, sir.

The Deputy Commissioner: All right.

(The witness thereupon was excused and retired from the witness stand.)

Thereupon

79 A. P. DAVID

was called as a witness for and on behalf of the respondent, and being then and there duly sworn by the Deputy Commissioner, assumed the witness stand and, upon examination, testified as follows:

79 EXAMINATION BY THE DEPUTY COMMISSIONER

By the Deputy Commissioner:

Q. You are Mr. A. P. David?

A. Yes, sir.

Q. What is your address?

A. 3310 Q½.

Q. Here in Texas City?
A. Galveston.

79 DIRECT EXAMINATION

By Mr. Vickery:

Q. Mr. David, do you recall having worked aboard the S/S SOUTHERN STATES here in Texas City in December of 1949?
A. Yes, sir.
Q. Do you recall having worked on that vessel on the night, Sunday night, December 18, and early Monday morning, December 19, 1949?
A. Yes, sir, I was there. I started and stayed until I finished. I was there all the time.

The Deputy Commissioner: What is your title again? I missed that.

Mr. Vickery: I haven't gotten that.

By Mr. Vickery:

Q. What was your job on that ship?
A. I was gear-man, taking care of the gear. And Mr. Harris had to go to Houston. So he left me in charge as forman over the other men.
Q. And you were in charge of the unloading operations on the S/S SOUTHERN STATES?
A. That's right.
Q. You were Mr. Harris' agent in charge of the unloading of SOUTHERN STATES?
A. Yes, sir.

Q. Now then, did you receive a report of any of the longshoremen on board the S/S SOUTHERN STATES on the night of December 18 or the morning of December 19, sustaining an injury of any kind?

A. No, sir.

Q. Did you have any knowledge of any longshoremen being injured on that particular night?

A. No, sir. Nobody reported.

Q. Now then, had there been an injury, whose responsibility would it have been to make out the accident report or to make out an injury report on it?

A. The timekeeper would have made out the report, but I would have been notified.

Q. But it would be Mr. Tarpey, the timekeeper's, job to make out the report?

A. Yes, sir.

Q. Was Ernest Wisby serving as a walking foreman over these two gangs of colored longshoremen, do you recall?

A. He was in charge of them.

Q. Did he make report of an injury of any kind to you?

A. Not that I know of. There wasn't none written, I know. And I don't remember him telling me.

Q. Were you present aboard this ship at the time flash fire occurred?

A. That's right.

Q. Were any injuries or accidents reported as a result of that flash fire?

A. None were reported to me.

Q. Now, Mr. David, you are a regular employee of the Southern Stevedoring & Contracting Company?

A. Yes, sir, I work regularly.

Mr. Vickery. I believe that is all.

81 EXAMINATION BY THE DEPUTY COMMISSIONER

By the Deputy Commissioner:

Q. What is the usual procedure regarding injuries, do the men look you up and tell you or does the immediate walking foreman report it to you ordinarily?

A. The injured person generally has one of the other people working alongside him go with him if he is injured. They get his name and all the credentials, whatever might be necessary, his dependents, relatives, all that. He gets all the red tape.

Q. Who does the injured man go to to report it?

A. The timekeeper. He has slips to write a man up.

Q. Does the walking foreman in the position Wisby occupied, does he have instructions to tell you about any injuries?

A. That is the regular procedure.

Q. Did you ask him if anybody was injured?

A. They were running off, and I asked if anybody was hurt, and—

Q. Did you ask if anybody was hurt?

A. Yes, sir, Mr. Tarpey and I both.

Q. Who did you ask?

A. The first one that come along, and I asked them all, because it was real foggy.

Q. Do you remember this fellow here (indicating)?

A. No, sir, I don't.

Q. You don't remember him being helped into an automobile to be taken home afterwards, or anything of that sort?

A. No, sir. Nobody said anything about it.

Q. You didn't see him or anybody else that looked like they were hurt or injured?

A. They all cleared off and some of them went back to work.

Q. You don't know whether Mr. Porter went back to work or not?

A. I don't know. I don't work overhead at all, just in that particular case.

Q. You had worked on the same ship with Wisby before, had you? Did you know him before?

A. Not before that happened, no sir. I mean before we worked that ship, that is the first time I worked with him.

Q. You don't know how well he was acquainted with reporting such matters?

A. No, sir, I don't.

The Deputy Commissioner: Earl, do you have any questions of Mr. David here?

The Claimant: No, sir. I don't remember seeing him.

83 DIRECT EXAMINATION (Continued)

By Mr. Vickery:

Q. When, Mr. David, to the best of your recollection, is the first time you had any knowledge that Earl Porter was claiming he sustained an injury on the S/S SOUTHERN STATES?

A. It was a short time ago, about a month and a half ago, I believe, something like that.

Q. Up to that time you had no knowledge or didn't know anyone was claiming they were hurt aboard that ship?

A. No, sir. I had forgotten all about it.

Mr. Vickery: I believe that's all.

The Deputy Commissioner: I believe that is all.

(The witness thereupon was excused and retired from the witness stand.)

Mr. Vickery: I want to put Mr. Pettigrew on very briefly.

Thereupon

84 SMITH PETTIGREW

was called as a witness for and on behalf of the respondent, and being then and there duly sworn by the Deputy Commissioner, assumed the witness stand and, upon examination, testified as follows:

84 DIRECT EXAMINATION

By Mr. Vickery:

Q. Will you state your full name, please.

A. Smith Pettigrew.

Q. Mr. Pettigrew, what is your occupation?

A. I am the district claims manager of the Galveston Branch Office.

Q. Of what insurance company?

A. Texas Employers' Insurance Association.

Q. Are you the insurance carrier for Southern Stevedoring & Contracting Company?

A. We are, yes.

Q. Mr. Pettigrew, in your capacity as district claims manager, do you have your records on the claim of Earl Porter against Southern Stevedoring & Contracting Company?

A. I do, sir.

Q. From your records, can you tell us when the insurance carrier first had written notice that Earl Porter was claiming he sustained an injury on board the S/S SOUTHERN STATES?

A. On July 14, 1950, sir.

Q. That was the first written notice?

A. That was the first written notice.

Q. Prior to that time, did you have any oral notice of Earl Porter?

A. On July 7, 1950, I believe was our first oral.

Q. And from whom did you receive that?

A. We received that from the Southern Stevedoring & Contracting Company, advising they had been advised by Mr. Voris, or in some manner, that Porter had made a claim.

Q. But up to July 7, 1950, you had no knowledge or no notice of an injury being sustained aboard this vessel?

A. None whatever.

Q. Have you also checked your records with reference to injuries to any of the employees of Southern Stevedoring & Contracting Company aboard this particular vessel?

A. Yes, sir. At your request, I examined all the cards of the Southern Stevedoring & Contracting Company for not only the month of December, 1949, but the entire year of 1949, and was unable to find where there was any injury to Earl Porter, first; second, was unable to find where there was any injury on the S/S SOUTHERN STATES; third, was unable to find where there was any injury on the day of December 18 and the morning of December 19, 1949.

Q. Now, then, Mr. Pettigrew, will you just explain to us what these dummy reports are Mr. Harris was talking about that he made to you as his insurance carrier?

A. Yes. When one of our insured advise us that they

have an individual that is alleging or claiming an injury on such and such a date, we advise them to make out a dummy report, what we call a dummy report, with as much information as they can obtain from the individual or from whomever is advising them of this alleged injury. We make this up for our records. We have to have some type of report before we can set up a file. And we set up a file from that dummy report, assign it a claim number and take care of the necessary expense, or, to take care of the necessary expense of investigating that claim. Without it, we would have no way to pay for the investigation.

Mr. Vickery: That is all, I believe—one more thing I am not sure about.

By Mr. Vickery:

Q. Then the insurance carrier had no knowledge of any claim for an alleged injury on the S/S SOUTHERN STATES prior to July 7, 1950?

A. That's right.

Mr. Vickery: That's all.

The Deputy Commissioner: I believe that is all.

(The witness thereupon was excused and retired from the witness stand.)

The Deputy Commissioner: Is that all your witnesses?

Mr. Vickery: That is all.

The Deputy Commissioner: Off the record.

(Discussion off the record.)

The Deputy Commissioner: On the record.

Regarding the question of employment on December 18 and 19, 1949, of Earl Porter by the Southern Stevedoring & Contracting Company, it is my understanding that his employment at that time is admitted by Mr. Harris and other officials of the company.

Mr. Vickery: And I would like also just so the record is clear—I am sure it appears, but at the outset of the claim, at the time notice was first given in July, 1950, there was considerable confusion as to the date of the alleged injury, first being claimed December 9, 1949, and later December 12, 1949. On neither of which dates was Earl Porter in the employ of Southern Stevedoring & Contracting Company. I think that is in the record of our first hearing, but I want to be sure the record shows that.

Then I have one other thing about the examination by Dr. Twidwell. I would like to get the date of that examination in the record by stipulation or otherwise. Our investigation shows that it was January 13, 1950.

Thereupon

88 EARL PORTER

the claimant herein, was called as a witness for and in his own behalf, and being then and there duly sworn by the Deputy Commissioner, assumed the witness stand and, upon examination, testified as follows:

88 EXAMINATION BY THE DEPUTY COMMISSIONER

By the Deputy Commissioner:

Q. Earl, does that sound all right about the date you went to Dr. Twidwell, January 1, 1950?

A. I guess so. I don't know.

Q. It was at least a couple of weeks after the injury you went to him?

A. It could be that and it could be longer.

Q. What did he do in the way of examination?

A. He just—

Q. Did Dr. Twidwell—

A. He just gave me a notice to go to the hospital at Galveston, but I didn't go. I didn't have anything to go on.

Q. To John Sealy Hospital?

A. Yes, sir.

Q. He didn't really examine you to any extent or offer you any treatment?

A. He told me he would send me over there. He made out a statement.

Q. But you didn't go over there?

A. No, sir, I didn't have anything to go there with. I couldn't borrow nothing.

Q. You mean you didn't have bus fare?

A. No, sir.

Mr. Vickery: As far as Dr. Twidwell is concerned, the only thing I am concerned about is the date that he saw him.

By Mr. Vickery:

Q. He was the first doctor you saw after your injury, wasn't he?

A. Yes, sir.

Mr. Vickery: I would like some way, by stipulation or otherwise, to get the date of January 13, 1950, as his visit to Dr. Twidwell in the record in a credible fashion. If it is agreeable, we would be glad to get a letter from Dr. Twidwell stating the date of his examination. If that isn't satisfactory, we would be glad to pay the doctor's expenses and furnish him here for testimony and cross examination if either the claimant or the Commissioner thinks it is necessary. We consistently take the position medical reports and doctor's are inadmissible because they are hearsay and we have no opportunity for cross examination. We tender the doctor for cross examination and will pay his expenses if you think it is necessary. Whatever you want to do about it. I want the record to be clear, I want it to show this examination.

The Deputy Commissioner: I don't think the date is being questioned.

By the Deputy Commissioner:

Q. That sounds like the best you can recollect, about three weeks after the accident you went to Dr. Twidwell?

A. Yes, sir. And it could be longer or less, Mr. Voris. I just don't know.

Q. As far as I am concerned, I am ready and willing to

accept that as a date you went to the doctor the first time. What were you doing that first three weeks? You weren't working, were you?

A. No, sir, I couldn't work.

Q. For my own information, Earl, I thought I would like to clear up anything about the details of this accident and injury that you can give us. You have heard the witnesses here this morning and you have heard two or three of them at least state they saw you fall off this ladder. Is that what happened?

A. Well, no, sir, Mr. Voris, like I first repeated over yonder, when this accident happened, I was back to the far corner. And when they carried this *budgeon* up—whatever they call it—

Q. Bullion.

A. Yes, sir. It got to the top and it swung back and hit the side. The bullion fell down. I went to run and something hit me on the left shoulder and across the back.

Q. Something hit you?

A. Yes, sir.

Q. Do you know whether it was the bullion hit you or not?

A. No, sir, it couldn't be the bullion. It was a plank, a two by four, or something like that that hit me.

Q. Then what happened?

A. It knocked me down. I got up to run upstairs—there are two stairs, a short one and a high one—and I fell back down off the short one. I didn't fall off the high one.

Q. You did fall off what you call a stairway?

A. Yes, sir. There is a low stairway that has two steps. That is the one I fell back off. The top one, I don't remember falling off that.

Q. These stairways, is that straight up and down ladders?

A. Yes, sir, straight up. It was the first one I fell back

off of, a low one, about that high (indicating), that I fell back off of. I don't remember falling off the other one.

Q. Before that, you had fallen on account of being hit by this timber or whatever it was?

A. Yes, sir.

Q. You fell before you got to the ladder, did you?

A. The first ladder, yes, sir.

Q. Then you fell back off the ladder?

A. The low ladder, yes, sir. I fell back off of it.

Q. The low ladder you went up on one deck from it and then the other ladder on up, is straight right?

A. Yes, sir, there are two decks, and they both had ladders.

Q. You don't know what part of your body you struck when you fell these two times, do you?

A. Yes, sir, below my belt, and across this left shoulder; knocked it out of place.

Q. What knocked it out of place, when you fell or when the timber hit you?

A. I felt a lick across the shoulder and across my back. That is when it knocked me down. I got up holding this way (indicating) and I went to go up the steps and fell back—the lower one.

Q. Ernest Wisby knew about your getting hurt that night?

A. Yes. sir, he really do.

The Deputy Commissioner: All right. Do you want to ask him any questions?

Mr. Vickery: I have a few I want to go into.

By Mr. Vickery:

Q. Earl, you told us last time, Madisonville was your home. That is where you were born and raised?

A. Yes, sir.

Q. Do you know a man up there by the name of Chambliss, a white man who used to be the sheriff up there?

A. Yes, sir.

Q. He is not the sheriff any more, is he?

A. No, sir, I don't think he is.

Q. Since you worked on board the S/S SOUTHERN STATES, have you talked to Mr. Chambliss about anything?

A. Yes, sir. I went to him for help.

Q. And what did you go to Mr. Chambliss for, why did you go to see him?

A. I was in a tight, and I was looking for help to get me over to a hospital.

Q. Well, was that in connection with your syphilis?

A. Syphilis?

Q. Yes, sir.

A. I don't understand what you are talking about.

Q. Do you know what syphilis is? Do you know what bad blood is?

A. Yes, sir.

Q. Now you know, that is what you went to see Mr. Chambliss about?

A. That was some part of it, and part of it wasn't.

Q. When you went to see Mr. Chambliss about this bad blood, that is when he sent you to Dr. Carroll?

A. No, sir, he didn't send me to Dr. Carroll.

Q. Had you been going to see Dr. Carroll before you talked to Mr. Chambliss about your bad blood?

A. Oh yes, I had been going to Dr. Carroll quite awhile.

Q. And that is the reason Dr. Carroll sent you to this hospital, to get treatments for your bad blood?

A. No, sir, not exactly as I know, sir.

Q. When you talked to Mr. Chambliss about your bad blood, you didn't tell him anything about your being hurt aboard this ship, did you?

A. No, sir, not exactly. Well, I told him I got hurt. I didn't tell him what ship, nothing like that.

Q. Did you tell him you got hurt aboard this ship?

A. Yes, sir.

Q. You didn't tell Mr. Chambliss that your trouble was with your bad blood and not because of any accident?

A. I don't remember it, sir.

Q. What type of work did you do here in Texas City, Earl, after you left Mason Brothers and before you went to work these two days on SOUTHERN STATES?

A. I worked some at the filling station out here at Ford, Bacon & Davis, I forgets his name, but the station on the corner of the road there, I worked for him.

Q. What type of station was it, Humble, Texaco, or Magnolia, or do you know?

A. No, sir, I don't.

Q. How long did you work out there?

A. I don't know, sir, how long it was. It was a pretty good while.

Q. How much money did you make working out there?

A. $36.00 a week.

The Deputy Commissioner: That is Ford, Bacon & Davis?

The Witness: No, sir, a filling station out there at Ford, Bacon & Davis.

The Deputy Commissioner: Oh, I see.

The Witness: I think his name is Mr. Davis.

By Mr. Vickery:

Q. You think his name is Davis?

A. Yes, sir.

Q. Now then, Earl, during that—did they take out any withholding tax from the pay check at the filling station?

A. Yes, sir.

Q. How much did they take out each week, do you know?

A. No, sir, I don't. I have really forgot.

Q. Now then, did you draw any unemployment compensation during 1949 through your Social Security? You know what I am talking about, your Social Security? Did you receive any money, any weekly checks?

A. You mean did I draw any?

Q. Yes.

A. Yes, sir.

Q. How much a week did you draw?

A. Every two weeks—it was $18.00 a week, that would be $36.00.

Q. $36.00 every two weeks?

A. Yes, sir.

Q. How long did you draw that in 1949?

A. I drawed $324.00.

Q. $324.00?

A. Yes, sir.

Q. How much did you draw in 1950, if any?

A. I haven't drawed any in 1950.

Q. You haven't drawn any?

A. No, sir.

Q. Did you get these social security checks through an office here in Texas City or was it an office at Galveston?

A. Texas City.

Q. Do you recall about what dates you drew this money?

A. No, sir, I really don't know, sir, what dates it was.

Q. Now then, Earl, were you working at this filling station out here near Ford, Bacon & Davis in 1949 or were you working there in 1948?

A. It was in 1948.

Q. 1948?

A. I think it was.

Q. Now, you didn't actually work for anybody in 1949 other than these two days that you worked for Southern Stevedoring & Contracting Company, did you?

A. You mean construction work?

Q. Well, I mean work where you got your regular pay check.

A. In 1949?

Q. Yes.

A. I picked mostly cotton in 1949.

Q. You picked cotton in 1949?

A. Yes, sir.

Q. Well, where did you pick most of this cotton?

A. Down at Rosenberg, down here.

Q. Who did you pick cotton for down there?

A. Well, sir, I don't know the fellow's name. I know him when I see him. He has a funny name; I couldn't call it.

Q. How many months did you pick cotton?

A. I picked down there a little better than a month.

Q. Then you drew your compensation and social security for about 18 weeks, which would take care of another four and a half months. What did you do the other five months of 1949?

A. After I got through drawing my social security?

Q. When did you get your last social security check in 1949, do you remember?

A. No, sir, I don't.

Q. Do you remember about when it was?

A. No, sir, I really don't.

Q. How long was it after you got your last social security check before you worked these two days on Southern States?

A. I just don't know, sir, how long it was.

Q. Well, was it a week or two, or two months, or what, Earl, just your best recollection?

A. Well, I just don't know, sir, because I wants to tell the truth, I really don't know, sir.

Q. Did you do any other type of work in 1949 other than this picking of cotton and these two days on the SOUTHERN STATES?

A. Yes, sir, I done a little yard work around for different people.

Q. Was that here in Texas City?

A. No, sir, that was up here at Madisonville—yes, sir, I worked a yard up here. I forget the place, up here on the other side of the post office, up there.

Q. Do you know whose yard it was?

A. No, sir, it was a white lady's.

Q. A white lady's?

A. Yes, sir.

Q. Did you just do this yard work occasionally?

A. You mean regularly?

Q. No, I mean every once in awhile, or regularly?

A. No, sir, I just catch a job and do it.

Q. Did you file an income tax in 1949 showing how much money you made during the year 1949?

A. No, sir, I don't remember filing no income tax.
Q. You don't remember filing an income tax?
A. No, sir.
Q. Do you know why you didn't file it?
A. You mean 1949 or 1948?
Q. 1949.
A. I didn't think I had done enough construction work to file one.
Q. You hadn't made enough money to file one?
A. No, sir, working for construction jobs.

The Deputy Commissioner: You mean wages that would be reported?

The Witness: Yes, sir, take it out.

By Mr. Vickery:

Q. You know if you made as much as $600.00 you were supposed to report it, don't you?
A. Yes, sir.
Q. You knew that, didn't you?
A. Oh no, sir.
Q. You didn't know that?
A. No, sir.
Q. Did you make as much as $600.00 during the year 1949?
A. Well, I just don't know, sir. I didn't keep count of it.
Q. You don't have any idea how much money you made in 1949?
A. No, sir.

By the Deputy Commissioner:

Q. Did you make as much working as you drew from your social security benefits, would you make about as much a week working as you did when you were on the social security benefits?

A. You mean, did I make as much that year?

Q. Did you make as much money a week when you were working as you drew from the benefits you got from the social security?

A. No, sir, no sir, not on the yards I didn't.

Q. This cotton picking was just a little over a month for the whole year; is that all you picked?

A. No, sir, I picked up here at Madisonville. I picked at Rosenberg for a month and picked some out in West Texas.

Q. That is last year you are talking about?

A. Yes, sir, 1949.

Q. How much time did you pick cotton altogether?

A. The whether was bad in 1949. I stayed a month and a half, or two months.

Q. Altogether?

A. Yes, sir, that year.

Q. What did you make a week picking cotton?

A. According to the weather—sometimes I make $25.00 and $30.00, and some weeks not but two or three dollars, because of the weather.

Q. This income tax return we are talking about would be one that was made the early part of this year. Now, that would cover last year. You didn't make a return this year to show what you made last year?

A. No, sir.

The Deputy Commissioner: Can we stipulate about the $36.00 a week he was drawing once in awhile?

Mr. Vickery: He was drawing $36.00 every two weeks, eighteen dollars a week.

The Witness: That is $18.00 a week.

Mr. Vickery: I think he probably got more a week there than—

By the Deputy Commissioner:

Q. Would you have any idea what you made last year at all in wages, besides these benefits you drew?

A. No, sir, Mr. Voris, I just really don't, because I just can't remember how much I made.

Q. Well, would it be $300.00 or a thousand dollars that you made last year?

A. No, sir, I didn't make no thousand dollars, because I didn't do that much work.

Mr. Vickery: Mr. Voris, to solve our difficulty, lets go off the record a minute.

The Deputy Commissioner: Off the record.

(Discussion off the record.)

By the Deputy Commissioner:

Q. Were you unable to work on account of illness or accident during any part of 1949?

A. Was I—

Q. Except for this accident you are talking about, prior to December 19, were you unable to work on account of being sick or disabled?

A. No, sir, I was able to work before this accident happened.

The Deputy Commissioner: All right, I will have to tell you for the record here, I will have to hold if you are entitled to compensation at all, it will be at the minimum of $12.00 a week on the information I have regarding your earnings. I haven't gotten anything to rate it any higher. If you have any way of furnishing us any information, I will be glad to consider it. The statement of the Texas Employment Commission regarding your earnings, apparently, intended to cover the—includes only the earnings on this one longshore job here of $14.67. It states that is the earnings for the last quarter of 1949, but it is understood that the Commission, in answering inquiries from your attorney for your earnings for the whole year, so far as reported to that Commission. Now, if you can tell us any more about what you made in 1949, I would like for you to do it because we have no income tax record or anything else to refer to, so far as I know.

The Claimant: No, sir, I didn't even file any income tax in 1948, and when I worked for Mason Brothers, I didn't file any.

By the Deputy Commissioner:

Q. This work for Mason Brothers you mentioned in a previous hearing. Was that in 1948 or was some of that in 1949?

A. Rightly, Mr. Voris, it was in 1949.

Q. You hadn't worked for them for a year before this accident last December then?

A. No, sir.

Q. All right.
A. No, sir, I hadn't, Mr. Voris.

The Deputy Commissioner: Do you have anything else on this wage rate, or anything?

Mr. Vickery: The only thing I would like for the record to be clear on is this: you are holding he would be entitled to a minimum compensation of $12.00 a week. Does that entail a finding that his average weekly wages are $18.00 a week?

The Deputy Commissioner: Yes.

Mr. Vickery: And you base your finding of $18.00 a week on the ground that the minimum he is entitled to is $12.00 and that is two thirds of $18.00?

The Deputy Commissioner: That's right.

Mr. Vickery: I wanted to be sure the record shows how the computation is made.

The Deputy Commissioner: Do you have anything else?

Mr. Vickery: Nothing.

By the Deputy Commissioner:

Q. One other question I have here is the date you first went to Dr. Emil Carroll at Madisonville about the shoulder or any other injuries you had. What time of the year was it you went to him?
A. Some time in March.
Q. In March.

The Deputy Commissioner: I have the following papers and reports in my file that I wish to make exhibits for the record of this hearing: Statement of Earnest Caldwell, dated October 2, 1950, is Exhibit A.

Letter and statement of earnings of Earl Porter, submitted by Texas Employment Commission, dated October 5, 1950, two pages, is Exhibit B.

Mr. Vickery: I will make my objections to all of these exhibits, Whatever I have, after you have them all numbered. Will that be satisfactory, rather than making them to each one?

The Deputy Commissioner: All right.

Statement of Dr. Emil Carroll, Madisonville, Texas, dated September 20, 1950, is Exhibit C.

Statement of Dr. Emil Carroll, of Madisonville, Texas, dated October 31, 1950, is Exhibit D.

Report of John Sealy Hospital, dated October 10, signed by Richard DeYoung, M. D., is Exhibit E.

Statement of John Sealy Hospital, of Galveston, Texas, signed by Dr. Richard DeYoung, dated November 1, 1950, is Exhibit F.

Statement of Dr. R. E. McMeans, Sr., Chiropractic Clinic, Huntsville, Texas, dated September 21, 1950, is Exhibit G.

I would like to also state I am making a part of this transcript a report of U. S. Marine Hospital of Galveston, Texas, where claimant was examined yesterday at my request.

Anything else?

Mr. Vickery: No. I want the record to show my objection to the introduction in evidence of Exhibits C, D, E, F, G, and H, on the grounds that they are hearsay, that the employer and the insurance carrier have had no opportunity to cross examine the doctors that made these reports for a full and true disclosure of the facts; on the grounds that they are not reliable, substantial, or probative evidence, in the absence of our being afforded the right to cross examine these doctors. They are mere conclusions and opinions of the doctors and are therefore objectionable in the absence of our right to cross examine.

We further specifically object to the introduction of Exhibits D and F on the grounds that they are signed by a doctor who did not even make an examination of this man and are necessarily based on his examination of the record made by another doctor who did actually examine the man, and they are therefore not only hearsay but they are hearsay on hearsay, and doubly objectionable for that reason.

The employer and insurance carrier object to the introduction of Exhibit B on the grounds that it is also hearsay, but solely for the sake of consistency is this objection made, and we, just so we will not be in the position of taking an inconsistent position in objecting to some hearsay and not to others, we have no objection for the sake of consistency to the introduction of Exhibit B.

The Deputy Commissioner: Let the record show the objection is overruled and I am following the practice and policy of this bureau in its hearings to receive signed written medical reports in the absence of the doctors being brought in for examination and cross examination at the hearing. The requirement that each and every doctor be produced hampers the proceedings, and we have conducted them in this manner.

(Thereupon, the documents in question were received in evidence and were marked Exhibits A, B, C, D, E, F, G, and are filed in the office of the Deputy Commissioner with the other papers in this case.)

The Deputy Commissioner: Let the record show the record of this hearing will be considered as open for any objection or presentation of further evidence for at least five days after the U. S. Marine Hospital report has been mailed to the parties.

Mr. Vickery: That will be fine, and the record should show, of course, in the absence of any word from us during that five day period, we do have the objection on the record as to the hearsay character as to that particular report, although the report has not been made a part of the record physically at this time.

The Deputy Commissioner: All right.

(Thereupon, the instant hearing was concluded.)

108 EXHIBIT A

Terra City, Texas
301 Sixth St.
October 2, 1910

STATEMENT OF EARNEST CALDWELL

My name is Earnest Caldwell. I am 30 years old. I live at 923 3rd Ave. South. I am a longshoreman.

I remember working aboard the S.S. Southern States. We were unloading bullion. I was working down in the hold. While we were working the sling dumped a load of tin bullion into the sulphur causing a flash fire. There was only one ladder and we all ran for the ladder. Earl Porter was working in the hold with us at the time of the fire. I saw Earl Porter fall off the ladder while he was coming up to the lower hatch. I guess he fell six or seven feet. The reason that I saw him fall was because I was still in the bottom of the ship when he fell. I was the last man out of the hatch. There were some boards laying in the bottom of the hatch and he had to fall on them. He got back up and went on out of the hatch before I did. I think that someone pushed Earl Porter up out of the hatch. I heard some boy say "Come on you can make it".

I saw Earl Porter five or six days after and he was walking with a crutch. I talked with him and he said that his back and shoulders were hurting him.

This is all I know about the accident.

/s/ Earnest Caldwell

109 Exhibit B

TEXAS EMPLOYMENT COMMISSION
Austin, Texas

(Seal)

October 5, 1950

Earl Porter
General Delivery
Madisonville, Texas

Pursuant to the power of attorney which you furnished the Texas Employers' Insurance Association, we are attaching a copy of the information which we furnished the Association.

Very truly yours,

Joe K. Wells
Joe K. Wells
Chief of Benefits

Attachment

110 Exhibit

TEXAS EMPLOYMENT COMMISSION
Austin, Texas

(Seal)

October 5, 1950

Texas Employers' Insurance Association
913 Colorado
Austin, Texas

Gentlemen:

Pursuant to the request of, and power of attorney furnished by, Earl Porter, Social Security Number 454-26-2766, we

are furnishing the following information concerning the earnings of this individual during the calendar quarter shown:

4th Quarter 1949
$ 34.57

Southern Stevedoring

Very truly yours,

Joe K. Wells
Chief of Benefits

111

Exhibit C

EMIL CARROLL, M. D.
Madisonville, Texas
9-20-50

To Whom It May Concern:

This is to certify that

EARL PORTER

has been under my care since March of this year. Because of his condition, traumatic periarthritis of left shoulder, he has been, still is, incapable of performing any work.

EMIL CARROLL, M. D.

112 Exhibit D

EMIL CARROLL, M. D.
Madisonville, Texas
10-31-50

Re: EARL PORTER

First seen 5-8-50 complaining of pain, swelling and limited motion in a shoulder. States onset followed injury in Dec. '49 when a 2x4" fell and hit on shoulder. Was told to keep arm in a sling for a few weeks which he did but difficulties presented and became progressively worse up until time he came to me. As patient was without funds, I referred him to Orthopedic Dept at John Sealy in Galveston where he was seen by Drs. Brandau & Eggers—then diagnosis was peri-arthritis of a shoulder. He was given direction as to treatment and returned to my care. Because of a positive serological test for syphilis I then sent him to Overton where he received a full course of penicillin treatment.

I have seen him several times since then and the shoulder is gradually improving. I am unable to prognosticate in his case as my limited experience with his sort of case does not enable me to do so. He has been incapacitated ever since I first saw him but has been improving over the past few months.

Emil Carroll, M. D.
Madisonville, Texas

113-114 Exhibit E

THE UNIVERSITY OF TEXAS—
MEDICAL BRANCH
Galveston

October 10, 1950

Orthopedic Division

Mr. Hugh A. Voris,
Deputy Commissioner
U. S. Department of Labor
Eighth Compensation District
Room 302, Post Office Building
Galveston, Texas

Dear Mr. Voris:

RE: 61-1970
Earl Porter
D/A 12/9/49
Southern Stev. and Contr. Co.

Earl Porter, a 46-year-old Negro male, was seen in the Orthopedic Clinic of the John Sealy Hospital on May 12, 1950.

His complaint was of pain and limitation of motion in the left shoulder, and pain, swelling, and limitation of motion in the wrist and fingers of the left hand. The history of his present difficulty dated from an injury in which he was struck across the back and left shoulder by a board. Thereafter, he had some pain in the shoulder and upper arm. He carried his arm in a sling for a period of six to eight weeks. The shoulder remained stiff after the sling was removed. Six weeks prior to his visit here, the left wrist began to be tender and showed some swelling. The patient has used the extremity very little since his injury, carry-

ing the arm in a dependent relaxed position most of the time.

Physical examination showed fairly good extension and flexion of the left shoulder, but abduction of the shoulder was limited to about 25 degrees and caused pain. Moderate deltoid atrophy was present on the affected side. Sensory and motor examination revealed no evidence of neurological disease. The deep reflexes were normal. There was mild edema of the lower forearm and of the hand. Diffuse weakness of the forearm muscles was noted.

It was our impression that this man has a peri-arthritis of the left shoulder, and a dependent edema and weakness of the hand due to disuse. The patient was encouraged to begin active use of the hand and was instructed in exercises for the hand and the shoulder.

He has not returned to the Out-Patient Clinic since the time of his original examination.

Sincerely yours,

G. W. N. Eggers, M. D.
Professor of Orthopedic Surgery

R. De Young
By: Richard De Young, M. D.,
Resident in Orthopedic Surgery

RDeY:meg
cc - Administrative Office

115 Exhibit F.

THE UNIVERSITY OF TEXAS—
MEDICAL BRANCH
Galveston

November 1, 1950

Orthopedic Division

U. S. Department of Labor
Employees' Compensation
Room 302, Post Office Building
Galveston, Texas

Gentlemen:

Re: Earl Porter
Southern Stev. & Contr. Co.

It was the impression of the physician who examined Earl Porter on May 12, 1950 that he had peri-arthritis of the left shoulder, following immobilization of the arm in a sling for treatment of a contusion of the shoulder, incurred when the patient was allegedly struck across the upper back and left shoulder by a 2 x 6 board.

There can be no doubt that the disability was definitely related to the injury incurred.

Very truly yours,
R. De Young
Richard De Young, M. D.
Resident in Orthopedic Surgeon

RDEY:eco

116 Exhibit G

R. E. McMeans, Sr., D.C. R. E. McMeans, Jr., D.C.

CHIROPRACTIC CLINIC

Phone 109
1110-10th Street
Huntsville, Texas
September 21, 1950

To Whom it may concern:

Earl Porter was in my office Sunday February 26, 1950 and Monday, February 27, 1950 with left shoulder partially dislocated and each day the subl uxation was corrected.

R. E. McMeans, Sr., D.C.
Dr. R. E. McMeans, Sr.
(Texas State License
Number 794)

REM/rmm

47 FINDINGS OF FACT AND CONCLUSIONS OF LAW

(Filed September 1, 1951)

(Title Omitted)

August 31, 1951

Memorandum:—

This action is one by the employer and insurance carrier to enjoin enforcement of an award of compensation under the Longshoremen's and Harbor Workers' Act (Title 33 U.S.C.A. 901, et seq.) entered by the defendant Deputy Commissioner on November 29, 1950, and supplemented and amended by an order of the Deputy Commissioner on March 14, 1951.

The plaintiff Southern Stevedoring & Contracting Co. is a partnership of Charles Eikel and B. D. Harris, who as contract stevedores in December, 1949 were unloading the SS SOUTHERN STATES at Texas City, Texas. The defendant claimant, Earl Porter, had been in the employ of the Stevedoring Company, and in fact had followed this line of work, for only two days prior to his injury of December 19, 1949. He was injured while he and other workers were escaping from a hold of the vessel after a "flash fire" had occurred.

The written notice of injury within the thirty-day period, as required by Sec. 912(a) (b) of Title 33, U.S.C.A., was not given either to the employer or to the Deputy Commissioner. Neither had actual knowledge until some

six months after the date of the accident. The first question presented is whether the finding of the defendant Deputy Commissioner, to the effect that the failure to give such notice was excusable under the terms of 912(d), is supported by reliable, probative and substantial evidence, as required by the Administrative procedures Act (Title 5 U.S.C.A. § 1001, et seq.).

In his findings of November 29, 1950, the Deputy Commissioner found "that the requirements of the Longshoremen's and Harbor Workers' Compensation Act as to the notice of injury was complied with by claimant". After an appeal from this award to this Court by the employer and insurance carrier, the matter was referred back to the Deputy Commissioner by Chief Judge Kennerly for further hearing, findings, and conclusions on this question of notice. Without holding further hearings, the Deputy Commissioner entered the order of March 14, 1951, from which this appeal is taken. In such order, the Deputy Commissioner found that written notice was not given within thirty days as provided by Sec. 12(b), but that the agent of the employer in charge of the business in the place where the injury occurred had knowledge of the injury, and that the employer had not been prejudiced by failure to give written notice; and further found that the failure was excused under Section 12(d) (2) for the reason that the claimant was illiterate, was not a regular longshoreman and was not acquainted with the requirements of the Act; he was not given instructions as to whom he should report his injury, and that he had reported same to his immediate foreman.

I have examined carefully the record of all the evidence heard by the Deputy Commissioner, and in my opinion the evidence does not support these findings nor bring the

case within the terms of either of the alternative provisions of Sec. 912(d) which would excuse written notice.

The first alternative provision of Sec. 912(d) excuses the giving of written notice "if the employer (or his agent in charge of the business in the place where the injury occurred) or the carrier had knowledge of the injury * * * *" There is little conflict in the evidence as to notice. It is clear that a number of the members of the gang of longshoremen with whom the claimant was working knew of his injury immediately (Moore, Rice, etc.). The foreman of claimant's gang (Lovely) knew of the injury, as did the "sub-walking foreman" (Wisby, who was in charge of two longshore gangs, but who in turn was under the "walking foreman" whose name does not appear. There is a dispute as to whether the timekeeper (Tarpey) had notice of the injury. Wisby testified that he had reported the accident to the timekeeper. The timekeeper denied that he had received such report or had any knowledge that an accident had occurred. While the testimony of Wisby would probably be sufficient to support the Deputy Commissioner's findings that Tarpey had notice if this were material, I do not think that it is. The statute requires notice to the employer or "his agent in charge of the business in the place where the injury occurred". The employer here was R. D. Harris, one of the partners of the firm, who was present during part of the time that the work was in progress. The agent in charge of the business of unloading the vessel, in the absence of Mr. Harris, was A. T. David who was present during Mr. Harris' absence and who was on board the vessel at the time of the accident and until the work was completed. There is no testimony whatsoever that either of these parties had any notice or knowledge of the injury.

Each of them has verified that he had no such knowledge, although each made inquiry after the fire.

There is likewise clear testimony that the insurance carrier had no notice of the injury, and no proof to the contrary. Counsel for the defendant argues correctly that the statute should be liberally interpreted; and that notice to the foreman, sub-walking foreman, or timekeeper was sufficient to comply therewith. But I do not feel that the plain terms of the statute may be disregarded under the guise of interpreting it liberally. The statute does not require notice to a foreman, or walking foreman, or timekeeper, but to the employer or his agent in charge. The identity of the employer and his agent in charge is undisputed, and there is a complete want of any evidence that either had any notice of the injury until some six months thereafter. All evidence is to the contrary.

The Deputy Commissioner has found that written notice likewise was excused under (2) of 912(d) in that "for some satisfactory reason such notice could not be given", finding as such "satisfactory reason" the fact that the claimant was illiterate, unable to read or write, and was unfamiliar with the terms of the statute or the procedures for giving notice; and further that the employer's negligence was the cause of claimant's failure to give notice.

While not cited by the defendants, cases such as Hoage v. Employers Liab. Assur. Corp. (64 Fed. (2d) 715); Hoage v. Royal Ind. Co. (90 Fed. (2d) 387), and Bethlehem Steel Co. v. Parker (D. C. 72 Fed. Supp. 35, 4 Cir., 163 Fed. (2d) 334) lend some support to this contention. But in each of these cases the failure to give timely notice was excused because the claimant was ignorant of a matter of fact, that an injury which appeared trivial at the moment in fact could and did constitute the origin of a serious and

disabling condition; or that a disabling condition with which the claimant was visited in fact had its inception in an injury sustained in his employment. I am aware of no authority to the effect that illiteracy, or ignorance of the statutory provision requiring notice itself excuses compliance.

Plaintiff further complains of the findings of the Deputy Commissioner to the effect that the employer and insurance carrier are liable for certain medical expense incurred by the claimant prior to the date of hearing. Sec. 907(a) of the Act provides in part as follows:

> "The employer shall not be entitled to recover any amount expended by him for such treatment or services unless he shall have requested the employee to furnish the same and the employee shall have refused or neglected to do so, *or unless the nature of the injury required such treatment and services and that the employer or his superintendent or foreman having knowledge of such injury shall have neglected to provide the same*; nor shall any claim for compensation or surgical treatment be valid and enforceable against such employer, unless within twenty days following the first treatment the physician giving such treatment shall furnish to the employer and the deputy commissioner a report of such injury and treatment, on a form prescribed by the Secretary. The deputy commissioner may, however, excuse the failure to furnish such report within twenty days when he finds it to be in the interest of justice to do so, and in any case upon application by a party in interest, make an award for the reasonable value of such medical or surgical treatment so obtained by the employee." (Emphasis added).

Undoubtedly, the treatment and services received by the employee were proper and necessary. His foreman had

knowledge of the injury on the part of [illegible] [illegible]
[illegible] [illegible] [illegible]
[illegible] [illegible] [illegible]
[illegible]

I am convinced that this question is controlled by the recent opinion of the court of Appeals for the 7th Circuit in Southern Stevedoring etc. Inc. et al. v. Voris et al. June 27, 1931 (not yet reported). This action of the Deputy Commissioner, standing alone, would require that the matter be returned back to him for further proceedings.

The plaintiffs further question the finding of the Deputy Commissioner as to the claimant's wage rate. While I have considerable doubt as to whether the evidence supports the finding which the Deputy Commissioner made in this regard, it is not necessary to dwell upon the question, inasmuch as I do, that the claimant is precluded from any recovery by reason of his failure to give timely notice as required by the statute.

The foregoing memorandum is adopted as Findings of Fact and Conclusions of Law. Clerk will notify counsel.

Done at Houston, Texas, this 11 day of August, 1931.

/s/ BEN C. CONNALLY
Judge

57

FINAL DECREE

(Filed September 17, 1931)

(Title Omitted)

On this the 17 day of September, 1931, the above entitled and numbered cause, came on to be heard, the plaintiffs appearing by and through their attorneys of record, and the defendants appearing by and through the United States Attorney, and the Court having considered the evidence and the briefs filed by plaintiffs and defendants, and the Court being of the opinion that the deputy commissi-

ner's compensation order of November 28, 1950, and the supplemental and amendatory compensation order of March 14, 1951, are in accordance with law and should be sustained, and this Court having filed its findings of fact and conclusions of law dated August 31, 1951 which findings and conclusions are hereby incorporated herein by reference and this Court being of the opinion that a final order should now be entered dismissing the enforcement proceedings and vacating the restraining order heretofore entered herein, now therefore, it is

ORDERED, ADJUDGED and DECREED that the defendant, deputy commissioner Hugh A. Vore and the defendant, Thomas Earl Parker, their agents, servants, employees, successors and assigns acting by, through or for them, and each of them be and they hereby are, permanently enjoined and restrained from, directly or indirectly enforcing the Compensation Order-Award of Compensation of November 28, 1950, and the Compensation Order-Order Amending and Supplementing order of Award of Compensation of March 14, 1951, and,

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the bond heretofore posted by plaintiffs as ordered by the Court in its interlocutory injunction of December 11, 1950, be cancelled of record and the plaintiffs and their surety be, and they hereby are, discharged from any liability on said bond.

DONE AT HOUSTON, TEXAS, this 17 day of September, 1951.

/s/ BEN C. CONNALLY
Judge

Approved as to form:
ROYSTON & RAYZOR
By: E. D. VICKERY
Attorneys for Plaintiffs

BRIAN S. ODEM
United States Attorney

W. G. WINTERS, JR.
Assistant United States Attorney
Attorneys for Defendants.

NOTICE OF APPEAL

(Filed November 1, 1951)

(Title Omitted)

Please take notice that Hugh A. York, Deputy Commissioner, Bureau of Employee's Compensation, United States Department of Labor, for the Eighth Compensation District, and one of the defendants in the above-entitled cause, hereby appeals to the United States Court of Appeals

for the Fifth Circuit, from the final judgment of this Court entered herein on the 17th day of September, A.D. 1951.

BRIAN S. ODEM
United States Attorney

By W. G. WINTERS, JR.
W. G. Winters, Jr.
Assistant United States Attorney

I, W. G. Winters, Jr., Assistant United States Attorney, hereby certify that a copy of the foregoing Notice of Appeal was served on Messrs. Royston & Rayzor, Attorneys of Record for Plaintiff, this 1st day of November, A.D. 1951 by mailing same to their last known address, Cotton Exchange Building, Houston, Texas.

W. G. WINTERS, JR.
W. G. Winters, Jr.
Assistant United States Attorney

WGW:cp

60 STIPULATION AND ORDER FOR THE TRANSMISSION OF ORGINAL PAPERS AND EXHIBITS TO THE CIRCUIT COURT OF APPEALS

(Filed December 28, 1951)
(Title Omitted)

It is stipulated and agreed by and between counsel for Plaintiffs and counsel for Defendant that, in an effort to reduce the time and expense involved in preparing the record on appeal in this cause and to insure that the record accurately reflects the papers and exhibits introduced in evidence in the trial of the cause in the District Court, and subject to the approval of the Court, and in accordance with such order as the Court may deem appropriate, the following original exhibits, which have been designated as part of the record on appeal, be transmitted by the District Clerk of the United States Court of Appeals for the Fifth Circuit, in accordance with the provisions of Rule 75 (i) of the Federal Rules of Civil Procedure, along with and as a part of the record on appeal in this case:

1. Official report of proceedings before Hugh A. Voris, Deputy Commissioner of the Eighth Compensation District, filed July 31, 1951.

BRIAN S. ODEM
United States Attorney
By W. G. WINTERS, JR.
W. G. Winters, Jr.
Assistant United States Attorney
Attorneys for Defendant

ROYSTON & RAYZOR
By E. D. VICKERY
Attorneys for Plaintiffs

ORDER

The foregoing stipulation and agreement is approved, and it is ordered that the District Clerk transmit the exhibits enumerated in said stipulation to the Clerk of the United States Court of Appeals for the Fifth Circuit in accordance with the terms of said stipulation, and that when the appeal in this cause has been finally determined, said exhibits shall be returned to the Clerk of this Court by the Clerk of the United States Court of Appeals for the Fifth Circuit.

Done at Houston, Texas, this 28 day of December, 1911.

/s/ BEN C. CONNALLY
United States District Judge

WGW:cp

CLERK'S CERTIFICATE

United States of America §
Southern District of Texas §

I, V. BAILEY THOMAS, Clerk of the District Court of the United States for the Southern District of Texas, in the Fifth Circuit and District aforesaid, do hereby certify the foregoing to be a true and correct copy of the record and all proceedings had in the case, as called for in the Designation of Record On Appeal, Page 1 of this Transcript, in Cause No. 3889 on the Civil Action Docket of said Court at Houston, Texas, entitled CHARLES EIKEL and S. D. HARRIS, dba SOUTHERN STEVEDORING & CONTRACTING CO. and TEXAS EMPLOYERS' INSURANCE ASSOCIATION -vs- HUGH A. VORIS and EARL PORTER as the same now appears on file and of record in my office.

And that in accordance with the stipulation as to Original Exhibits and the Order thereon, which said Order appears on Page 238 of said Transcript, the Original Exhibit referred to in said Order is herewith transmitted as a part of the Transcript

TO CERTIFY WHICH, Witness my hand and the Seal of said Court at Houston, in said District, this the 25th day of January, A.D. 1952.

V. BAILEY THOMAS, CLERK
United States District Court
Southern District of Texas

By W. P. HARRISS
W. P. Harriss, Deputy

That thereafter the following proceedings were had in said cause in the United States Court of Appeals for the Fifth Circuit.

Argument and Submission

Extract from the Minutes of November 11, 1952.

HUGH A. VOSS, Deputy Commissioner, Bureau of Employee's Compensation, U. S. Department of Labor, for the Eighth Compensation District,

No. 13953 versus

CHARLES EIKEL and B. D. HARRIS, d/b/a SOUTHERN STEVEDORING & CONTRACTING COMPANY and TEXAS EMPLOYERS' INSURANCE ASSOCIATION.

On this day this cause was called, and after argument by W. G. Winters, Jr., Esq., Assistant United States Attorney, for appellant, and E. D. Vickery, Esq., for appellees, was submitted to the Court.

Opinion of the Court Filed December 17, 1952.

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 13953

HUGH A. VOSS, Deputy Commissioner, Bureau of Employee's Compensation, U. S. Department of Labor, for the Eighth Compensation District, *Appellant*,

versus

CHARLES EIKEL and B. D. HARRIS, d/b/a SOUTHERN STEVEDORING & CONTRACTING COMPANY and TEXAS EMPLOYERS' INSURANCE ASSOCIATION, *Appellees*.

Appeal from the United States District Court for the Southern District of Texas.

December 17, 1952.

Before HUTCHESON, Chief Judge, and BORAH, and RIVES, Circuit Judges.

HUTCHESON, Chief Judge: Brought by the Southern Stevedoring & Contracting Company, a partnership composed of Charles Eikel and B. D. Harris, employing stevedores, and their insurance carrier,

the suit was to enjoin enforcement of an award of compensation under the Longshoremen's and Harbor Workers' Act (Title 33 USCA 901, et seq.) entered by the defendant Deputy Commissioner on November 29, 1950, and supplemented and amended by an order of the Deputy Commissioner on March 14, 1951.

The claim was that the award was invalid because the provisions of Sec. 12[1] of the Longshoremen's Act, (33 USCA Sec. 912) had not been complied with, and the claim was barred.

The respondent, the deputy commissioner, admitting that the written notice required by the act had not been given, but invoking Subdivision (d) of the section, defended on the ground that the evidence showed, and he, as commissioner had found, under (d)(1), "that the agent of the employer in charge of the business in the place where the injury occurred had knowledge of the injury and that the employer had not been prejudiced by failure to give written notice"; and also had found "that failure of the employee to give notice in writing as provided by Sec. 12(b) is hereby excused for the following reasons."[2]

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[1] Sec. 12 of the Longshoremen's Act, 33 USCA, Sec. 912 provides as follows:

"(a) Notice of an injury or death in respect of which compensation is payable under this Act shall be given within thirty days after the date of such injury or death (1) to the deputy commissioner in the compensation district in which such injury occurred and (2) to the employer.

(b) Such notice shall be in writing, shall contain the name and address of the employee and a statement of the time, place, nature, and cause of the injury or death, and shall be signed by the employee or by some person on his behalf, or in case of death, by any person claiming to be entitled to compensation for such death or by a person on his behalf.

(c) Notice shall be given to the deputy commissioner by delivering it to him or sending it by mail addressed to his office, and to the employer by delivering it to him or by sending it by mail addressed to him at his last known place of business. If the employer is a partnership, such notice may be given to any partner, or if a corporation, such notice may be given to any agent or officer thereof upon whom legal process may be served or who is in charge of the business in the place where the injury occurred.

(d) Failure to give such notice shall not bar any claim under this Act (1) if the employer (or his agent in charge of the business in the place where the injury occurred) or the carrier had knowledge of the injury or death and the deputy commissioner determines that the employer or carrier has not been prejudiced by failure to give such notice, or (2) if the deputy commissioner excuses such failure on the ground that for some satisfactory reason such notice could not be given; nor unless objection to such failure is raised before the deputy commissioner at the first hearing of a claim for compensation in respect of such injury or death."

[2] These were: "That claimant reported the injury verbally to the employer's foreman in charge of the gang in which claimant was working at the time of injury, immediately following the injury; that said notice was

The district judge filed findings of fact and conclusions of law in opinion[3] form, finding and holding that the record did not support the commissioner's order, and gave judgment setting aside the compensation order and enjoining the defendant deputy commissioner and the claimant from enforcing it.

Appealing from the judgment, the commissioner is here insisting: that the evidence in the record considered as a whole supports his finding that the employer had knowledge of the injury or the alternative finding that for some satisfactory reason notice could not have been given; and that either finding would support the order. So insisting, he urges upon us that the judgment must be reversed.

We do not think so. In agreement, as we are, with the views of the district judge as announced in his opinion, we shall not unduly extend this opinion. In complete agreement with his view that a liberal and reasonable construction of the act is one thing and that reading language into it which it does not contain or giving effect to it which its language does not permit is quite another, we cite, in support, *Warren H. Pillsbury* v. *United Engineering Co.*, 342 U. S. 197; *Christensen* v. *United States*, 194 F(2) 978.

We are, too, in full agreement with his view: that congress having provided "failure to give notice shall not bar any claim under the act if the employer (or his agent in charge of the business in the place where the injury occurred) * * * had knowledge of the injury * * *", the act means just what it says and that, to be effective, knowledge must be brought home to the owner or to his

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repeated the next day; that claimant is an illiterate man, testifying that he is unable to read and only writes his name with difficulty; that he was not a regular longshoreman and had only worked as a longshoreman one night prior to the date of his injury, and was not acquainted with the requirements as to reporting an injury; that he was not given any instructions as to whom he should report an injury; that his immediate foreman was the only representative of the employer known to him, and that said foreman testified that he had reported the injury to the timekeeper of the employer; that it is shown by the testimony of several fellow-workers that claimant was complaining of injury at the time said injury occurred and that his injury was generally known to these fellow-employees following a hurried exit from the ship due to a flash fire; that the timekeeper has testified that he immediately visited the scene of the accident, and could easily have inquired as to injuries among the gang of longshoremen but disclaims knowledge of this injury at the time; that claimant's verbal report of injury to his immediately foreman constitutes the usual method of reporting such injuries, and that it is clearly due to the negligence of agents of the employer that said injury was not reported and claimant furnished with medical treatment at the time the injury occurred."

[3] Eikel v. Voris, 101 Fed. Supp. 964.

agent in charge of the business,—in this case David,—and nothing less will suffice.

It is perfectly clear to us, as it was to the district judge, that the carefully drawn language of the act is not satisfied by the showing, accepted by the deputy commissioner as sufficient, that Wisby had knowledge of the injury. He was in no sense the agent or representative in charge, for the stevedores, of the work of unloading the ship. He was not even a regular employee of theirs. An official of the union at the hiring hall and its representative in connection with this job, he had no connection with the stevedores except the casual one of gang pusher or walking foreman on this particular job.

Finally, we agree fully with the district judge that the statute providing as an alternative to knowledge of the owner or his agent in charge that if the deputy commissioner excuses the failure to give notice "on the ground that for some satisfactory reason such notice could not be given" the "failure to give notice shall not bar the claim", did not invest the commissioner with unlimited and unguided power to excuse or refuse to excuse. On the contrary, it set up a standard conformable to right reason to which, considering the primary purpose of Sec. 12 of the act in requiring prompt notice and presentation of claim, the reasons put forward by the deputy commissioner as satisfactory must reasonably conform.

To reasons given by the deputy commissioner as satisfactory reasons why such notice could not have been given in this case are not, under the statute, reasons at all. They are mere excuses on grounds which the statute does not define as excuses. If accepted in this and similar cases, they would largely nullify Sec. 12, making it unnecessary to file a written notice or to bring home knowledge to the employer or his agent in charge, or for the deputy commissioner to furnish satisfactory reasons for excusing the failure to give notice. They would do this by writing into the statute exceptions from its provisions in favor of employees who: (1) were illiterate; (2) were not regular longshoremen; (3) had worked only a short time; (4) were not acquainted with the requirements about reporting; (5) had reported to their immediate gang pusher; and (6) might fall into any other categories which the deputy commissioner would from time to time invent or devise to further nullification of the statute. In short, the acceptance of these and similar reasons put forward by a deputy commissioner as satisfactory would rewrite the statute to give the deputy commissioner arbitrary power according to his whim or caprice to excuse or refuse to excuse.

We are sure that the congress had no intention to clothe the deputy commissioner with such power. In the absence of language compelling such a construction, no court would be justified in imputing such an intention to the Congress. In the presence of language such as this statute contains, we think no court could fairly impute such intention to the congress or properly give the statute such effect.

While, of course, the decisions of the Texas courts under the somewhat analogous provision in the Texas Workmen's Compensation Act, excusing for "good cause" the failure to file claim within six months, are not authoritative, they are persuasive. Though the words "good cause" are not otherwise defined in the statute, the Court of Texas have assigned to these words a clear and regular meaning. Under their authoritative decisions,[4] it is the settled law of Texas that the "good cause" contemplated by the statute means such cause as would be considered a reasonable excuse for not filing the *claim by a man of ordinary prudence who is reasonably mindful of his own interests.* Ordinarily the existence of good cause is a question of fact to be determined by the jury, but where the undisputed evidence reflects a state of facts about which the minds of reasonable men cannot differ, it is a question of law.

The judgment was right. It is

AFFIRMED.

Evans, Circuit Judge, Dissenting:

Lewis Lovely, the gang foreman, and Ernest Wisby, the walking foreman, each testified that he had actual knowledge of the claimant's injury on the night that it occurred. Irrespective of the manner and duration of their employment, both Lovely and Wisby were then employees of the Southern Stevedoring & Contracting Company, and it was responsible for their acts and omissions within the scope of their employment the same as if they had been selected without the aid of a union and their duties were to extend over years. Wisby was the man who hired Earl Porter, the claimant. He was in charge of the gang of longshoremen, directed them in their work and exercised general supervision over them. He was the person who paid off the men for the employer and was the only representative of the employer known to the claimant.

Wisby testified:

"Q. What are your instructions about reporting injuries? Don't they report to their immediate foreman first?

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[4] Hawkins v. Safety Cas. Co., 148 Texas, 381; American Motorists v. Boortz, 197 F(2) 900 and cases cited.

"A. They report to the immediate foreman; tell me and I inform them to get hold of the doctor. But on this job, I didn't. I was filling in there as walking boseman at night, as substitute, I guess. I don't know who was over me. I think Harrison was supposed to be walking that ship; I think he was. Another boy was over him.

"Q. Who was over you?

"A. I don't know his name.

"Q. As a matter of general practice, don't the men report to the immediate foreman?

"A. Yes, immediate foreman and foreman in turn.

"Q. You leave it to the men to go find the timekeeper, find their way around?

"A. I reported it to the timekeeper myself, and told him Earl got hurt.

"Q. Who is the timekeeper?

"A. Mr. Turpey.

"Q. Is that R. J. Turpey?

"A. Yes, that's right. I report to him and he in turn is the man supposed to have the slip to go to the doctor. Because I wouldn't know what doctor to send them to."

Turpey, the timekeeper, denied that Wisby reported the claimant's injury to him, but further testified that it was Wisby's duty so to do. "Q. And he is supposed to report these injuries to you or Mr. David or somebody in charge of him, does he? A. Yes, sir."

Mr. David, the man conceded by the employer to be its agent in charge of unloading the ship, testified: "Q. Does the walking foreman in the position Wisby occupied, does he have instructions to tell you about any injuries? A. That is the regular procedure."

Mr. Harris, one of the employer partners, testified: "Q. If Wisby had notice of an injury, would it be part of his duty to tell Mr. Turpey or Mr. David? A. Yes, sir. * * *."

When the undisputed evidence establishes both that knowledge of the claimant's injury was brought home to the foreman, and that it was the foreman's duty to report it to his employer, it is clear to my mind that the consequences of the failure of the foreman to perform his duty should be visited on the employer, not on the claimant.

In *Merritt* v. *American Stevedores*, 15 N.J. Misc. R. 710, 196 A. 382, 385, the court held that the knowledge of the foreman under whose direct and immediate supervision the employee worked from day to day must be regarded as the imputed knowledge of the employer; that, under the compensation act, "humanely conceived for the benefit of the more or less uneducated laborer," he cannot

be held "to a greater burden than to bring home knowledge to the person with whom he is contemplated to deal in the corporation's behalf."

In *Fox Campbell Co. v. Tracy*, 164 N. E. 328, 68 Ind. App. 362, the court said:

> "A workman had received an injury by accident, arising out of and in the course of his employment, and his foreman had knowledge of these facts and should have reported the same to his superiors. His failure so to do cannot be charged against the appellee."

The two cases just cited are typical of hundreds which might be collected. 26 Am. Jur. Workmen's Comp. Law, Sec. 305, p. 322; 71 C. J. 980, Workmen's Compensation Acts, Sec. 737; Annotations 16 A. L. R. 1220, 92 A. L. R. 518, 519, 107 A. L. R. 328, 128 A. L. R. 1302, 1306; L. R. A. 1915 B 962, 964; Ann. Cas. 1917 D 676.

It has been pointed out that the Federal Longshoremen's and Harbor Workers' Compensation Act was patterned largely upon the New York Workmen's Compensation Law. *Parsons Fidelity Co. v. Bronken*, 7 F. S. 561, affirmed 286 F. 2d. 668; *Jones v. Pillsbury*, 33 F. S. 362, affirmed 116 F. 2d. 478. The notice requirements are similar though the New York Act is more explicit. See Sec. 18 of the New York Act and see 2 Schneider, Workmen's Compensation Statutes, p. 2246. New York is in line with courts throughout the Country in holding that a foreman's knowledge of an accident or injury is the knowledge of the employer, so as to dispense with the necessity of giving a written notice. *Kunkel v. Westinghouse*, 203 App. Div. 218, 197 N. Y. S. 215; *Matter of Hughes v. St. Patrick's Cathedral*, 245 N. Y. 201, 202. In *Matter of Finch v. Buffalo Knowlton Co.*, 218 N. Y. App. Div. 21, 24, it was said:

> "If the accident is promptly described to him or his superintendent by the injured employee, or by someone who knew the facts, the employer has knowledge of the accident within the meaning of the statute."

In 2 Larson's Workmen's Compensation Law, Sec. 78.31(b) the rule is thus stated:

> "Generally, in order that the knowledge be imputed to the employer, the person receiving it must be in some supervisory or representative capacity, such as foreman, physician or

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[1] See also Employers' Liability Assurance Corp. vs. Monahan, 91 F. 2d. 130, 133; Spencer-Kellogg & Sons vs. Willard, 190 F. 2d. 830, 832.

sums; knowledge of a mere co-employee is not sufficient. But any degree of authority which places a man in charge of even a small group of workers is enough to confer this representative status."

Let me again quote the pertinent provision of 33 U. S. C. A. 912(d):

"Failure to give such notice shall not bar any claim under this chapter (1) if the employer (or his agent in charge of the business in the place where the injury occurred) or the carrier had knowledge of the injury or death and the deputy commissioner determines that the employer or carrier has not been prejudiced by failure to give such notice, or (2) if the deputy commissioner excuses such failure on the ground that for some satisfactory reason such notice could not be given * * *."

It is sufficient if either the employer or his agent in charge had knowledge of the injury. With deference, it seems to me that the effect of the majority decision is to confront us with a dilemma: either to strike the first alternative, or to require that the knowledge by the employer be gained first hand as an eye witness. The second horn is no more admissible than the first. Employers of longshoremen, I believe, are usually firms or corporations of considerable size. The only way in most cases that such employers can have knowledge of an injury is through their agents. That is recognized by another section of this same Act (33 U. S. C. A. 907) permitting the employee to recover for medical treatment or services when "the employer or his superintendent or foreman having knowledge of such injury shall have neglected to provide the same." The present claimant is in the anomalous position, according to the majority, that there was sufficient knowledge of his injury to render his employer liable for his medical expenses, but not sufficient knowledge for him to recover compensation. I do not think that Congress in an act intended to compensate longshoremen, day laborers, intended any such fine spun technical distinction. I submit that when knowledge is brought home to the foreman who is under a duty to report the injury, that is knowledge of the employer.

Finally the section empowers the deputy commissioner to excuse the failure to give notice "on the ground that for some satisfactory reason such notice could not be given," and the deputy commissioner has undertaken to exercise that power. The reasons which the deputy commissioner considered satisfactory are set out in footnote 2 of the majority opinion. If those reasons, considered

together as a whole, are viewed from the employee's standpoint, it seems to me that they are adequate and sufficient, indeed compelling reasons why the thirty day notice could not be given. The power vested by Congress in the deputy commissioner to excuse timeliness of notice is in extremely broad terms. *Bethlehem Steel Co. v. Parker*, 163 F. 2d. 234. In my opinion, the deputy commissioner did not abuse the discretion with which he was vested.

For each of the reasons stated, I respectfully dissent.

Judgment.

Extract from the Minutes of December 17th, 1952.

HUGH A. VOSS, Deputy Commissioner, Bureau of Employee's Compensation, U. S. Department of Labor, for the Eighth Compensation District,

No. 13963 versus

CHARLES EISELE and B. D. HARRIS, d/b/a SOUTHERN SCAFFOLDING & CONTRACTING COMPANY and TEXAS EMPLOYERS' INSURANCE ASSOCIATION,

This cause came on to be heard on the transcript of the record from the United States District Court for the Southern District of Texas, and was argued by counsel;

On consideration whereof, It is now here ordered and adjudged by this Court that the judgement of the said District Court in this cause be, and the same is hereby, affirmed.

"Rives, Circuit Judge, dissents."

Clerk's Certificate
United States of America.
United States Court of Appeals.
Fifth Circuit.

I, Oakley F. Dodd, Clerk of the United States Court of Appeals for the Fifth Circuit, do hereby certify that the pages numbered from 240 to 254, next preceding this certificate, contain full, true and complete copies of the pleadings, record entries, and proceedings, including the opinion of the United States Court of Appeals for the Fifth Circuit, in a certain cause in said Court, numbered

12958, wherein Howe A. Vann, Deputy Commissioner, Bureau of Employee's Compensation, U. S. Department of Labor, for the Eighth Compensation District is appellant, and Charles Burns, and B. D. Hearne, d/b/a Southern Stevedoring & Contracting Company and Texas Employers' Insurance Association, are appellees, as full, true and complete as the originals of the same now remain in my office.

I further certify that the pages of the printed record, numbered from 1 to 220, are identical with the printed record upon which said cause was heard and decided in the said Court of Appeals.

In testimony whereof, I hereunto subscribe my name and affix the seal of the said United States Court of Appeals at my office in the City of New Orleans, Louisiana, in the Fifth Circuit, this Thirteenth day of February, A. D., 1953.

Seal

Oakley F. Dodd
Clerk, U. S. Court of Appeals
for the Fifth Circuit.

U.S. GOVERNMENT PRINTING OFFICE 1953—243036/P.C. 1194

Supreme Court of the United States

No. 661, October Term, 1952

HOBE A. VOSS, DEPUTY COMMISSIONER, BUREAU OF EMPLOYEES' COMPENSATION, U. S. DEPARTMENT OF LABOR, ETC., PETITIONER

v.

CHARLES EIKEL AND B. D. HARRIS, D/B/A SOUTHERN STEVEDORING & CONTRACTING COMPANY, ET AL.

Order allowing certiorari

Filed May 18, 1953

The petition herein for a writ of certiorari to the United States Court of Appeals for the Fifth Circuit is granted, and the case is transferred to the summary docket.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.